United States Court of Appeals for the Second Circuit



APPENDIX

75-4117

United States Court of Appeals

SECOND CIRCUIT

ROBERT W. BLANCHETTE, etc.,

Petitioners,

against

United States Environmental Protection Agency,

Respondent.



APPENDIX

Kenneth H. Lundmark Counsel Metropolitan Region

Consolidated Rail Corporation 466 Lexington Avenue New York, N.Y. 10017



SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C-AIR PROGRAMS

[FRL 365-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Connecticut: Control of Air Pollution From Facilities Owned, Operated or Under Contract With Connecticut Transportation Authority

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator initially approved the State Plan for implementation of the National Ambient Air Quality Standards in the State of Connecticut. The Administrator's approval of the Legal Authority section of that Plan was based on the assumption that the State had the legal authority required by 40 CFR 51.11, including authority to prevent construction, modification or operation of any stationary source where emissions from such source would prevent the attainment or maintenance of a national standard.

Subsequently, the Connecticut Supreme Court ruled in Town of Greenwich v. Connecticut Transportation Authority, et al., 35 Conn. L.J. 45 (1974), that Connecticut General Statutes Section 16-344 exempts facilities owned, operated or under contract with the Connecticut Transportation Authority from the State Implementation Plan. Therefore, under the present state of the law in Connecticut, the State does not have the legal authority required by the Clean Air Act. The Administrator proposed to disapprove the State implementation plan insofar as the State lacked the requisite legal authority with regard to facilities of the Connecticut Transportation Au-

thority in a notice of proposed rulemaking on January 16, 1975 (40 FR 2832).

Section 110(c)(1) of the Clean Air Act directs the Administrator to publish proposed regulations to be substituted for any portion of a plan submitted by a State which he determines not to be in accordance with the requirements of section 110 of the Act, and to provide opportunity for a but ic hearing on the regulations to be substituted within such State. The proposed regulations would become a part of the State implementation plan if finally promulgated. On January 16, 1975 (40 FR 2832), the Administrator published the regulations proposed to be substituted which are identical to Connecticut Regulations for the Abatement of Air Pollution, sections 19-508-1 through 19-508-25 inclusive, and gave notice of a hearing to be held on February 11, 1975 in Greenwich, Connecticut. Actual written notice was sent to interested parties, and the Greenwich Times on January 9, 1975 carried a story announcing the public hearing on page one.

A hearing was held on February 11, 1975, and reconvened on February 18, 1975. There was substantial testimony by local health officers, local residents and by representatives of the Connecticut Department of Environmental Protection that the Cos Cob Generating Plant owned by Penn Central Transportation Company and leased to the Connecticut Transportation Authority was frequently in violation of the applicable emission and opacity limitations. No person appearing at the hearing, or submitting testimony subsequently opposed the disapproval of the State implementation plan or the substitution of the proposed regulation by the Administrator. Representatives of the Connecticut Transportation Authority and of the Penn Central Transportation Company appeared, presented plans for the phasing out of the Cos Cob Generating Plant and asked for a delay in the im-

plementation of the regulation. The hearing provided for adequate notice to and participation of the public.

Accordingly, on the basis of information produced at the public hearing and otherwise before the EPA, the Administrator hereby disapproves the Connecticut Implementation Plan insofar as the State lacks the legal authority to control emissions from sources owned or controlled by the Connecticut Transportation Authority; and hereby further promulgates, as federal regulations for inclusion in the implementation plan, regulations identical to those originally intended by the implementation plan to apply to facilities of the Connecticut Transportation Authority.

This rulemaking is effective June 30, 1975. (42 USC 1857c-5)

Dated: May 22, 1975.

RUSSELL E. TRAIN,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is as amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart H-Connecticut

1. Section 52.377 is amended by adding a new paragraph (b) as follows:

§ 52.377 Legal authority.

(b) The requirements of §51.11(a) of this chapter are not met because the State does not have the legal au-

thority to enforce approved implementation plan regulations against facilities owned, operated, or under contract with the Connecticut Transportation Authority.

2. A new § 52.380 is added, as follows:

§ 52.380 Rules and regulations.

- (a) All facilities owned, operated or under contract with the Connecticut Transportation Authority shall comply in all respects with Connecticut Regulations for the Abatement of Air Pollution sections 19-508-1 through 19-508-25 inclusive, as approved by the Administrator.
- (b) For the purposes of subsection (a) of this section the word "Administrator" shall be substituted for the word "Commissioner" wherever that word appears in Connecticut Regulations for the Abatement of Air Pollution Sections 19-508-1 through 19-508-25 inclusive, as approved by the Administrator.

[FR Doc. 75-14018 Filed 5-28-75; 8:45 am]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

75-4117

ROBERT W. BLANCHETTE, RICHARD C. BOND and JOHN H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor,

Petitioners.

against

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

The petitioners are the Trustees of the property of Penn Central Transportation Company, Debtor in Reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C. § 205, and hereby petition the United States Court of Appeals for the Second Circuit for review of an action by Russell E. Train, Administrator of the Environmental Protection Agency, and respectfully show to the Court and allege:

As and for a first claim

- 1. This petition for review is brought pursuant to 42 U.S.C. § 1857h-5(b)(1).
- 2. Respondent approved and promulgated an implementation plan with respect to abatement of air pollution by rulemaking dated May 22, 1975, and promulgated by publication in the *Federal Register* on May 29, 1975, in 40 F.R., No. 104, pp. 23279-80. Said implementation plan was adopted pursuant to 42 U.S.C. § 1857c-5.

- 3. Said implementation plan affects a facility of the petitioners located in the State of Conecticut in the Second Circuit.
- 4. Petitioners operate the New Haven Line commuter service under contract with the Metropolitan Transportation Authority of the State of New York and the Connecticut Department of Transportation, carrying approximately 30,000 passengers each workday to and from New York City.
- 5. A public hearing was held with respect to said proposed rulemaking in Greenwich, Connecticut, on February 18, 1975.
- 6. The implementation plan at issue herein was adopted by the Environmental Protection Agency without the preparation of an Inflation Impact Statement as required by Executive Order 11821 issued by the President on November 27, 1974, a copy of which is annexed hereto, and marked Exhibit A, and Office of Management and Budget Circular A-107, attached hereto and marked Exhibit B.
- 7. By reason of said omission, the said implementation plan and regulation is illegal, void and of no force and effect.
- 8. The requirement of Executive Order 11821 which directs the preparation and filing of an Inflation Impact Statement in connection with major proposals for legislation and for the promulgation of regulations or rules by any executive branch agency was called to the attention of the Respondent at the said public hearing on February 18, 1975.

- 9. The adoption of the implementation plan and regulation at issue would cause the Cos Cob, Connecticut generating plant to be shut down and become inoperative.
- 10. It is and will be impossible to discontinue the use and operation of said Cos Cob generating plant and convert to power sources which would comply with Environmental Protection Agency emission standards before the year 1976, at the earliest.
- 11. The said Cos Cob generating plant is owned by Penn Central Transportation Company, and is leased to the State of Connecticut, and is operated by the Trustees of Penn Central Transportation Company under contract with aforesaid State of Connecticut and the Metropolitan Transportation Authority of the State of New York.
- 12. In the event the aforesaid Cos Cob generating plant is unable to operate, all rail service between New Haven, Connecticut and New York City must be terminated until another power supply source for the electrified line of railroad can be constructed.
- 13. Respondent has not considered the cost impact of such action on consumers, businesses, markets, Federal, State or local governments, in violation of Executive Order 11821 and Office of Management and Budget Circular A-107.
- 14. Respondent has not considered the effect of such action on the productivity of wage earners, businesses or government.
- 15. Respondent has not considered the effect of such action on competition.

- 16. Respondent has not considered the impact of such action on supplies of important products or services.
- 17. By reason thereof, the action of Respondent in adopting said implementation plan was illegal, void and of no force and effect.

As AND FOR A SECOND CLAIM

- 18. Petitioners repeat, reiterate and reallege each and every allegation of paragraphs 1 through 12 with the same force and effect as if set forth at length herein.
- 19. The rulemaking and implementation plan at issue is illegal and void for the further reason that the Administrator's approval and promulgation of the plan, 40 F.R., No. 104, p. 23279, at 23280, is based on an inaccurate, false and erroneous premise, to wit, a statement that
 - "No person appearing at the hearing, or submitting testimony subsequently opposed the disapproval of the State implementation plan or the substitution of the proposed regulation by the Administrator. Representatives of the Connecticut Transportation Authority and the Penn Central Transportation Company appeared, presented plans for the phasing out of the Cos Gob Generating Plant and asked for a delay in the implementation of the regulation."

The inaccuracy of the Administrator's quoted statement is shown by a transcript of a portion of the tapes of the hearing which is annexed hereto and marked Exhibit C.

20. The Administrator's quoted statement is also inaccurate for the further reason that it ignored and did not take into consideration a statement in opposition made by William J. Lynch, Transportation Counsel of the Department of Transportation of the State of Connecticut.

AS AND FOR A THIRD CLAIM

- 21. Petitioners repeat, reiterate and reallege each and every allegation of paragraphs 1 through 12 with the same force and effect as if set forth at length herein.
- 22. Respondent failed to take into consideration the effect such action would have on the environment by reason of the additional automotive traffic which would be created, congestion on the roads, parking problems in the New York City area, and increased consumption of gasoline which would be created.

Wherefore, petitioners ask the Court to review the action of Respondent in adopting the aforesaid implementation plan by rulemaking promulgated by publication in the Federal Register on May 29, 1975, 40 F.R. No. 104, pp. 23279-80, and to vacate and set aside the said action of the Administrator, and that the Court issue a Temporary Restraining Order suspending the operation of the implementation plan herein during the pendency of this proceeding.

R. K. Pattison
Robert K. Pattison
General Manager
Metropolitan Region
Penn Central Transportation Company

Kenneth H. Lundmark Counsel-Metropolitan Region Penn Central Transportation Company 466 Lexington Avenue New York, N. Y. 10017

By Lloyd H. Baker Lloyd H. Baker Assistant Counsel Metropolitan Region

Exhibit A, Executive Order 11821.

Inflation Impact Statements

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget.

Now, Therefore, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Section 1. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. Such evaluation must be in accordance with criteria and procedures established pursuant to this order.

- Sec. 2(a) The Director of the Office of Management and Budget is designated and empowered, to the extent permitted by law, to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant impact upon inflation, and to prescribe procedures for their evaluation.
- (b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any depart-

Exhibit A, Executive Order 11821.

ment or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.

- Sec. 3. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant impact:
- a. cost impact on consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
 - c. effect on competition;
 - d. effect on supplies of important products or services.
- Sec. 4. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, furnish him with such information as he may request, and comply with the procedures prescribed pursuant to this order.
- Sec. 5. This order expires December 31, 1976, unless extended prior to that time.

GERALD R. FORD

THE WHITE House, November 27, 1974.

[FR Doc. 74-28157 Filed 11-27-74; 12:09 pm]

EXECUTIVE OFFICE OF THE PRESIDENT OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503

January 28, 1975

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Inflation Impact Statements

I am forwarding for your guidence, OMB Circular No. A-107, which requires the evaluation of the economic impact of proposed major Executive branch initiatives. This Circular was authorized by Executive Order No. 11821, signed November 27, 1974, by President Ford. The President first announced his intention in this regard in his October 8, 1974, Message to the Joint Session of Congress. This Circular reflects the comments of various Departments and Agencies on a prior draft. The President's intention is to make Government decisionmakers more sensitive to the hidden and often excessively costly consequences of prospective Government actions. Because this is an important part of the President's economic program, it is incumbent on all of us to focus our best analytical efforts on the full economic consequences of Government's actions.

The Council on Wage and Price Stability will play a major role in this effort. The Council will be receiving summaries from you of your evaluation of proposed major rules and regulations, and may be requesting other information from you in connection with the evaluations.

Also, the Council on Wage and Frice Stability will assist OMB and Executive Departments and Agencies in identifying criteria to comply with the Executive Order. Several commenting agencies pointed out the need for greater specificity in the criteria and procedures prescribed pursuant to the Order. While we do not believe it is appropriate or practical in this instance to spell out in great detail criteria applicable Government-wide in a circular, we do believe it is particularly important that agencies achieve this specificity for their internal approaches to implement the Executive Order. We will be working with you and will provide you any assistance you may require.

Thank you for your cooperation in this important effort.

Roy L. Ash Roy L. Ash Director

Enclosure

[EMBLEM]

EXECUTIVE OFFICE OF THE PRESIDENT OFFICE OF MANAGEMENT AND BUDGET Washington, D.C. 20503

January 28, 1975

CIRCULAR No. A-107

To the Heads of Executive Departments and Establishments

Subject: Evaluation of the Inflationary Impact of Major Proposals for Legislation and for the Promulgation of Regulations or Rules

- 1. Purpose. This Circular prescribes guidelines for the identification and evaluation of major proposals for legislation and for the promulgation of regulations or rules.
- 2. Authority. Executive Order No. 11821 provided that major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The Director of the Office of Management and Budget (OMB) was designated to develop criteria and prescribe procedures for carrying out the Order.
- 3. Coverage. For purposes of this Circular major proposals for legislation and for the promulgation of regulations or rules for which evaluations will be required will be determined by criteria developed by each Executive branch agency and approved by the Director of OMB in accordance with this Circular. Agencies which do not propose legislation or promulgate rules or regulations may

be exempted from the requirements of this Circular (pursuant to Section 4(e)).

4. Requirements.

- a. Agency heads are responsible for the development of criteria to determine which proposed legislation, regulations, or rules originated by the agency are "major" and therefore require evaluation and certification. In developing criteria, each agency head shall consider, among other things,
- (1) cost impact on consumers, businesses, markets, or Federal, State, or local government;
- (2) effect on productivity of wage-earners, businesses, or government;
 - (3) effect on competition;
- (4) effect on supplies of important materials, products or services;
 - (5) effect on employment;
 - (6) effect on energy supply or demand.
- b. Each agency shall develop procedures for the evaluation or proposals identified by application of approved criteria. The evaluation should include, where applicable,
- (1) an analysis of the principal cost or other inflationary effects of the action on markets, consumers, businesses, etc., and, where practical, an analysis of secondary cost and price effects. These analyses should have as much quantitative precision as necessary and should focus on a time period sufficient to determine economic and inflationary impacts.
- (2) a comparison of the benefits to be derived from the proposed action with the estimated costs and infla-

tionary impacts. These benefits should be quantified to the extent practical, and

- (3) a review of alternatives to the proposed action that were considered, their probable costs, benefits, risks, and inflationary impacts compared with those of the proposed action.
- c. Agencies should comply with the requirements of this Circular with existing resources and personnel.
- d. Identification criteria established by each agency shall be submitted to the Office of Management and Budget within 30 days of the issuance of this Circular for review and approval by OMB in consultation with the Council on Wage and Price Stability. Each agency shall designate an official to be responsible for compliance with this Circular and shall also notify OMB and the Council within the 30 days of that officer's name and titie.
- e. Agencies that do not propose major legislation, rules, or regulations, may be exempted from the requirements of this Circular by the Director of the Office of Management and Budget, acting in consultation with the Council on Wage and Price Stability. Requests for exemption should be submitted to OMB within 30 days of issuance of this Circular.

5. Disclosure.

a. As provided in Executive Order No. 11821, major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The statement of certification should be repeated whenever the proposal is published or issued. Upon request, agencies shall provide the Office of Management and Bud-

get with the information necessary to ascertain that the approved criteria and procedures are adequately implemented.

- b. When legislative proposals determined to warrant evaluation are forwarded to OMB for review and clearance pursuant to OMB Circular No. A-19 (Revised), agencies should furnish upon request appropriate data and analyses.
- c. After a legislative proposal is forwarded to the Congress, economic data and analyses developed in evaluating the inflationary impact of the proposal along with other data and analyses concerning the overall impact of the proposal will, of course, be furnished to the Congress, as part of the overall justification of the proposal.
- d. With respect to major proposals for rules or regulations, the proposing agency shall also, at the time it first certifies it has evaluated the inflationary impact of the proposal, submit to the Council on Wage and Price Stability a copy of the proposed rule or regulation, the accompanying certification, and a brief summary of the agency's evaluation pursuant to Section 4(b) above.

6. Responsibilities.

- a. Council on Wage and Price Stability. Each Executive branch agency should be prepared to respond to requests for information from the Council on Wage and Price Stability, or from other authorized agencies, concerning the identification or evaluation of a major proposal for legislation, rule, or regulation or of a particular class of proposals.
- b. The Office of Management and Budget. The Office of Management and Budget will cooperate with the agencies in developing criteria and evaluation procedures in compliance with this Circular.

- c. Interim Provisions. In the interim prior to final approval of criteria, agency heads are responsible for identifying which proposed legislation, regulations, or rules originating from their agency require evaluation and certification. In making such determinations, agency heads shall consider the categories of impact in Section 4(a) of this Circular. For assistance, agencies may consult the following: for legislative proposals, the Assistant Director for Legislative Reference (OMB), telephone 395-4864; or for proposed regulations or rules, the Assistant Director for Government Operations and Research (Council on Wage and Price Stability), telephone 456-6493.
- 7. Inquiries. Inquiries and requests for other assistance should be directed to the Associate Director for Economics and Government (OMB), telephone 395-4844 (code 103).

Roy L. Ash DIRECTOR

Do you wish to testify?

Mr. Lundmark: Yes, I think I should.

[Laughter]

Mr. Lundmark: First of all, I want to straighten out or try to straighten out Dr. Kraus once more. I was at that meeting he talked about a couple of years ago, and at that time he tried to put words in my mouth that I said the railroad was above the law. He refused to accept my corrections, and he persists in bandying about loose statements. The simple fact is that the law, as you know, Mr. Hearing Officer, § 16-344 exempts facilities leased by CTA. It is as simple as that. I think it might be useful for your Administrator to get a little bit of history. This problem originated as an economic one, and it remains such. The New Haven was in bankruptcy almost continuously since the 30's. It never became a viable corporation, and in February, in January, 1969, Penn Central was forced to merge with the New Haven as a price that they imposed for permitting the Penn Central-or Pennsylvania-New York Central merger. Within 18 months after that joinder of misfits, Penn Central became bankrupt, and subsequent events indicate that it must have been on the brink even at the time it absorbed the New Haven. Consequently, nobody had the money to even think about replacing that costly facility. At the time of the inclusion of the New Haven, negotiations were pending then with the States of New York and Connecticut to try and figure out a way to infuse the capital that could permit this essential form of transportation to continue to take the people from the bedroom to their place of business. Some of the statements stated here aren't quite appropriate, but, well, for example,

you should "adopt some regulation in order to put pressure on." Perhaps that would be good, but put the pressure upon whom? I don't know if your Administrator is aware that Penn Central is operating this New Haven Line Service under a contract with the two States under which it is guaranteed reimbursement of any deficits. But in operating the Service it is under a budget approved by the two States which permits the expenditure of money only in the areas approved in advance by the two States. Penn Central has no options with respect to phasing out Cos Cob, purchasing commercial power or anything else in that area. We are at the mercy of the States, so to speak, to execute our contract to operate this Service in accordance with their financial directions. We certainly haven't a great record to point out to the populace here, but at this moment any shortcomings at Cos Cob can no longer be tagged on Penn Central. We are helpless to do anything about it, although I will say this. During the last three or four years, I think we have been very instrumental in getting the States to allocate funds to improve the condition, or maybe alleviate or ameliorate the horrible condition. You can pick your own words, but we have, in fact even just in 1974 we have installed new combustion controls, which actomatically regulates the amount of air and the coal that is used in operating the boilers. This is far superior to the manual means that we formerly used. This cost a lot of money, in fact a quarter of a million dollars. But it has, let us say in some slight degree, reduced the nuisance which you are subjected to . . .

[Background voices]

Mr. Lundmark: All right, it is less than it would have been but for this quarter-million dollars invested that the States ante-ed up. You can laugh if you want to, you can snicker.

[Background voice: We are not laughing at you, it is just funny. It is so terrible, you wouldn't believe how bad it is.]

Mr. Lundmark: I believe. I live in Stamford, I have been here for 22 years. I know what Cos Cob is. I am not proud of it, but I am trying to explain that it is now beyond our control, except to the extent we can get the States' money. Now in 1972, no 1973, we were able to get less than 1% sulfur coal, until the fuel crisis came, and since then we have been buying the best we can get. I checked the recent records, and I think in the last six months we were under 1% only on one test, and the next best is 1.13, and that is admittedly poor, but it's better then we used to have, and it is because we were able to persuade the States to let us spend the money to get the coal. We are now paying \$40 a ton. A year and a half ago we were paying \$8. We are not still buying the cheapest coal we can. We are buying the best coal we can get to try and make it less offensive, although from the comments I have heard it still is terrible, but . . .

[Woman's voice: You know the lawyer that was with me at the PUC hearing was standing right where you are, and he said there is no soot come; out of that power plant—it's so funny. He said that, you know, if you lived here you would know. I don't know whether...]

Mr. Lundmark: I know there is soot, there is particulate fallout. We have no . . .

[Woman's voice: No soot!]

Mr. Lundmark: Well, I don't know who handled that. It was probably a New Haven lawyer; right after the inclusion the New Haven lawyers took over. I didn't get involved in this until after the bankruptcy. But in any event that is water over the dam. One point I would like to

make, I cannot find any regulations that your Administrator has adopted governing rulemaking, but I assume that you, such as the Federal Railroad Administrator, in a rulemaking proceeding that is not required to be conducted upon the record, can reach your determinations upon any information available to you. And the point has been suggested, and I think it is a good one, that yo make further inquiry, and I urge you to get in touch with the CL&P and with UMTA and with Con Ed, and ascertain from them what they think is a reasonable earliest target date for the conversion of the plant. The December 1975 date which was promised back in '73 is unfortunate. Early in '74, when we had hearings before the New York PSC on the conversion of Con Ed power from 25-cycle to 60-cycle so as to be compatable with what CLP is going to furnish us here, the issue in that proceeding was Con Ed wanted to phase out 25-cycle at the end of 1974. They had heard dates such as you have heard many years ago that we weren't going to need Cos Cob after '74, but the New York Public Service Commission would not let Con Ed phase it out because based on the evidence that was submitted they came to the conclusion that it would be sometime in '76 before it could be converted. In fact, they required Con Ed to continue to provide 25-cycle power until the end of 1976. That is why I urge you to contact Con Ed also, to find out what they believe is the likelihood of the date they can convert to 60-cycle power to feed in with the CLP power. And CLP, of course, which is doing a lot of the construction work, would certainly be in the best position of all to know about the availability of structural materials. and so forth. I think I indicated this started as an economic problem, and since the railroad is always the bad guy I will just remain in type and point out to you that if you aren't already aware of it, the President's Executive

Order 11821 required an Inflation Impact Statement concerning this proceeding. To my knowledge, it has not been prepared or served. I am advised by the Office of Management and Budget that it issued OMB Circular A-107 requiring that your Administrator comply with that Executive Order by Circular dated January 28, 1975, A-107, OMB Circular A-107. In brief, this requires that before you can promulgate this proposed rule you must find that it will not have

[Note: Here continuity was lost while changing tape. Following is Mr. Lundmark's recollection of the missing portion of the proceedings:]

(Mr. Lundmark: an adverse effect upon the President's economic program. As indicated in both Executive Order 11821 and OMB Circular A-107, the Administrator of your Agency was required as a condition precedent to conducting this hearing to develop criteria to determine whether or not the instant proposal is "major" rulemaking. Your Administrator, as well as the Director of the Office of Management and Budget, is required to consider the:

- "(1) cost impact on consumers, businesses, markets, or Federal, State or local government;
 - (2) effect on productivity of wage-earners, businesses or government;
 - (3) effect on competition;
 - (4) effect on supplies of important materials, products or services;
 - (5) effect on employment;
- (6) effect on energy supply or demand." before proposed Section 52.380, which would require

the closing of the Cos Cob Generating Plant and the cessation of New Haven Line commuter service, may even be considered, let alone promulgated. Upon evaluation of these factors, the Administrator would find the cost impact and other adverse effects to be so great as to be incalculable.)

At this point, the Hearing Officer acknowledged that he was unaware of Executive Order 11821 or OMB Circular A-107. Copies were handed to the Hearing Officer, with the observation that in view of the Hearing Officer's ignorance of these documents it may be assumed that the Administrator had made no application to OMB for exemption from the requirements of the Circular and Executive Order.

Mr. Lundmark then noted that the announced proposal to promulgate EPA regulations applicable to all Connecticut Transportation Authority facilities, thereby subjecting the Cos Cob Generating Plant to Federal regulation rather than State law, and compelling conversion from

[Note: Here tape resumes.]

Cos Cob provided power to CLP provided power, will close down the New Haven Line—and some of the residents probably would like it—but I think the 30-odd thousand people that use this line to get to work every day would find that they were hard put upon, and I do believe that for that reason you will have difficulty in preparing the Impact Statement that the President's Executive Order requires.

[Gentleman's voice: Mr. Lundmark, I would just like to inquire about at this stage... as well. The purpose of this hearing is to decide whether Connecticut Transporta-

tion Authority facilities can be in the implementation plan, in order to obtain or make the higher standards. Whether or not what is at issue is resolved, we then have to consider a timetable to bring Connecticut Transportation Authority facilities into compliance which would . . . But, it must be emphasized that the question before us today is whether . . .

Mr. Lundmark: Well, I misread Section 52.380 then. It seems awfully final to me. If adopted, it would make the Connecticut regulations your regulations, and applicable. I didn't see anything tentative about the language in 52.380.

[Gentleman's voice: That is correct.]

Mr. Lundmark: But if it is modified, as the Hearing Officer states, obviously it might be premature for an Impact Statement.

[Gentleman's voice: No, what 52.380 means, what Connecticut in the existing text of the Connecticut regulations proposed to be adopted as Federal regulations...]

Mr. Lundmark: All right, but would you mind educating me a little? As I read it, before this is promulgated and given an effective date, Governor Grasso would have to request a delay in implementation, and that would have to be, that could only be for a year. In other words, if you propose to make this effective April 1...

[Gentleman's voice: Are you talking of the Executive Order?]

Mr. Lundmark: No, your CFR. If you came out with a notice effective May 1 you were going to adopt this, the Governor could get a deferment of up to a year in the implementation, if she moves before May 1.

[Background noise]

Mr. Lundmark: All right, but I say then, I say that under the optimum—the optimum—conditions I still think this is a lot more final than you are suggesting, but I hope I am wrong.

[Voices: . . .]

Mr. Lundmark: One other thing. I thought I was through, but you mentioned something. A week ago, I talked to our superintendent of the Cos Cob plant. In fact, Bill Lynch was with me, and I asked him: "If you had a million dollars today to do something—anything—to improve the situation, what could you do?" And he said: "There isn't a thing that could be accomplished before the end of 1976 even if I had the money." I suggest in your search for information you might even look to engineering firms.

[Voices: ...]

Mr. Lundmark: Let me answer Mr. Kraus. I think I was at that hearing. Sure, they were trying to force us to convert to gas or fuel oil, and you ought to thank the Lord that we were stubborn. We knew that it couldn't work. There are hazards of transportation and storage of the fuel or natural gas. Then came the end of 1973. If we were foolish enough to yield to the pressure, this railroad would only be operating part time.

Notice of Motion.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[SAME TITLE]

The petitioner hereby moves this Court for an order suspending during the pendency of this proceeding the operation of the air pollution implementation plan affecting facilities of the Connecticut Transportation Authority of the Connecticut Department of Transportation which was promulgated by publication in the Federal Register on May 29, 1975, in 40 F.R., No. 104, pp. 23279-80. Said motion will be made on the affidavit of James J. Weldon, sworn to June 19, 1975, of John F. Davis, sworn to June 19, 1975 and of Lloyd H. Baker, sworn to June 23, 1975, all annexed hereto, and upon the Petition and exhibits heretofore filed herein.

Kenneth H. Lundmark Penn Central Transportation Counsel, Metropolitan Region Company

By LLOYD H. BAKER
LLOYD H. BAKER
Assistant Counsel
Metropolitan Region

Affidavit of Lloyd H. Baker, in Support of Motion.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[SAME TITLE]

STATE OF NEW YORK COUNTY OF NEW YORK SS.:

LLOYD H. BAKER, being duly sworn, deposes and says:

I am an Assistant Regional Counsel, Metropolitan Region, for the Penn Central Transportation Company, and I make this affidavit in support of this motion for an order suspending during the pendency of this proceeding the operation of the air pollution implementation plan promulgated by the respondent on May 29, 1975.

The petition for review was filed on June 20, 1975. On that date I sent a copy of the petition to the Environmental Protection Agency Regional Office in Boston Mass., along with a letter requesting suspension of the rulemaking during the pendency of the review proceeding, with copies to the office of the Administrator, Russel D. Train, in Washington, D.C.

During the morning of Monday, June 23, 1975, I telephoned the Hearing Officer, Alex Kovel, in Boston, and applied for a suspension of the rulemaking during the pendency of this review proceeding. Mr. Kovel advised me that he would take the question up with the proper authorities in the agency, and advise me of the decision. Thus, we have complied with Rule 18 of the Federal Rules of Appellate Procedure, by first making application to the agency for a stay. Due to the fact that rulemaking is scheduled to become effective on June 30, 1975, I feel that

Affidavit of Lloyd H. Baker.

we cannot wait for a decision on our application, and

accordingly, I ask that this motion be granted.

I have examined the facts and the law in this case, and as appears by the petition and exhibits, the respondent did not make an Inflation Impact Statement before promulgating the rulemaking, as required by Executive Order 11821. It further appears that the respondent at least in part based the rulemaking on an incorrect premise, and further violated its own regulations and policy by not taking into account the air pollution effect which would be brought about by the increased automotive vehicle traffic which would result from adoption of this plan. Therefore, I am convinced that the petitioner has a strong probability of success in this proceeding.

The affidavits of James J. Weldon and John F. Davis show the irreparable injury which would result from the plan if it is not suspended during the pendency of this

proceeding.

Wherefore, I respectfully request that this motion be granted in all respects.

(Sworn to by Lloyd H. Baker, June 23, 1975.)

Affidavit of James J. Weldon, in Support of Motion.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No. 75-4117

[SAME TITLE]

STATE OF NEW YORK SS.:

James J. Weldon, being duly sworn, deposes and says:

I am employed by the Penn Central Transportation Company as Chief Stationary Engineer of the electric generating plant at Cos Cob, Connecticut. I have been employed in the mechanical department of the New Haven Railroad and then the Penn Central (since the merger) since 1945. I have been Chief Stationary Engineer of the

plant since July, 1973.

The plant is owned by Penn Central and leased to the Connecticut Department of Transportation, and managed by Penn Central under contract with the Connecticut Department of Transportation and the Metropolitan Transportation Authority of the State of New York. This plant supplies the necessary electric power to operate the commuter trains, and also the Amtrak trains, between New York and New Haven.

I am familiar with the air environmental quality regulations of the Connecticut implementation plan. Since the plan went into effect, we have been trying, for the past few years, to come into voluntary compliance with the standards of the plan, although it has always been the position of the Connecticut Department of Transportation that it is not subject to the plan. I have been advised by our counsel that the highest court of Connecticut has re-

Affidavit of James J. Weldon.

cently so held. Even before the plan went into effect, the company made every effort to keep emissions at a minimum, and in recent years, large sums of money have been spent to further reduce emissions.

However, there is no way that the Cos Cob plant can be operated in complete conformity with these standards. The Connecticut Department of Transportation and the Metropolitan Transportation Authority of the State of New York plan to phase out the Cos Cob plant as soon as we are able to convert our signal equipment, overhead catenary equipment and cars to 60-cycle power. When that is done, we will be able to purchase 60-cycle power from the Connecticut Light and Power Company (in Connecticut) and Consolidated Edison (in New York). At this time, our equipment operates on 25-cycle power which Connecticut Light and Power Company is unable to supply (they phased it out about ten years ago). On the New York side of the state line, Consolidated Edison would be able to supply only approximately one-third of our requirements for 25-cycle power.

The company is presently working on the problem of converting to 60-cycle power. A great deal of equipment has been ordered, and a considerable amount of it is on the property now. The new M-2 cars can readily be converted to 60-cycle power, but the 4400 Series cannot be so converted without a great deal of time, effort and expense. The state authorities are awaiting delivery of approximately 100 more M-2s. At the present time, a considerable number of 4400 cars are still being used, and will have to be used until the M-2 fleet is completely delivered.

Thus, if the Cos Cob generating plant must cease operations, the electrified portion of the New Haven Line will be unable to operate. This would disrupt both the commuter service and Amtrak service.

(Sworn to by James J. Weldon, June 19, 1975.)

Affidavit of John F. Davis, in Support of Motion.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[SAME TITLE]

STATE OF NEW YORK SS.

JOHN F. DAVIS, being duly sworn, deposes and says:

I am the Manager of Passenger Service, Penn Central Transportation Company, Metropolitan Region.

During the year 1974 the New Haven Line had an average daily ridership of 46,253, and for the year 1975 to date the average daily ridership has been 45,943. Of these, the great majority are daily commuters who use the New Haven Line to get to their places of employment in New York City. Attached hereto and marked Exhibit A is a compilation of our New Haven ridership figures for 1974 and 1975.

There is no other way for these passengers to get to New York City by mass transit except for a minute fraction of them who could be handled by the West Fordham Transportation Company, a part of the Westchester County Department of Transportation, which runs between Stamford, Connecticut, and Fordham Road, Bronx, and also the Westchester Street Transporation Company, which has routes between Pelham and New Rochelle and the Bronx. The vast majority of the passengers who rely on the New Haven Line for their daily transportation to their places of employment would be relegated to reliance on automobiles, with its attendant problems of congested highways and difficulty and expense of finding parking space in New York City.

(Sworn to by John F. Davis, June 19, 1975.)

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Affidavit of John F. Davis.

NEW HAVEN RIDERSHIP BY MONTH 1974-1975

	(a)		RT				
	MONTHLY	TEN	Off	ONE			
1974	COMMS.	TRIP	PEAK	WAY			
JANUARY	961,172	55,000	113,752	281,364			
FEBRUARY	949,544	61,350	114,100	277,017			
MARCH	980,362	53,380	115,410	280,426			
APRIL	976,448	54,380	113,928	279,585			
MAY	968,620	51,930	103,380	285,790			
JUNE	960,070	59,630	107,058	283,742			
JULY	927,542	70,730	106,808	301,773			
AUGUST	893,798	70,620	111,184	307,360			
SEPTEMBER	946,048	62,760	92,962	262,292			
OCTOBER	979,298	58,130	108,562	277,356			(b)
NOVEMBER	975,992	49,490	110,868	265,480			Average
DECEMBER	955,358	56,270	126,816	277,413			Daily Rides
TOTAL	11,474,252	703,670	1,324,828	3,379,598	=	11,474,252 ÷ 365 =	46,253
1975							
JANUARY	980,818	54,330	108,064	251,433			
FEBRUARY	959,234	50,060	98,948	224,646			
MARCH	970,710	52,740	112,008	255,288			
APRIL	978,310	52,100	111,002	253,479			
	3,889,072	209,230	430,022	984,846	=	5,513,170 ÷ 120 =	45,943

- (a) Divide by 38 to find No. of coms sold.
- (b) Monthly coms + 10 ride tickets spread and over 30 day period in month. Would be higher if computed on 5 day per week basis.

Source-MPA Monthly Statements 1974-75 to date.

Compiled by Passgr. Service Dept. June 17, 1975.

Response to Show Cause Order.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-4117

[SAME TITLE]

The implementation plan promulgated by Respondent on May 29, 1975 (40 Fed. Reg. 23279-80) applicable to Petitioners' Cos Cob, Connecticut electric power generating station should not be stayed. Respondent respectfully requests that, instead, this Court allow Respondent to expeditiously proceed to place the facility on an enforceable schedule of compliance under said implementation plan consistent with the terms and intent of Section 110 of the Clean Air Act (42 U.S.C. 1857c-5) and Agency regulations implementing that section (40 CFR 51.15).

Petitioners' actions for judicial review and request for stay pending review appear to be based upon a misconception of the consequences which flow from the promulgation of implementation plan requirements by Respondent. The requirements at issue here, which take effect June 30, 1975, do not require an immediate shut down of Petitioners' facility nor does the Respondent intend any such result. Rather, the Respondent intends immediately after the effective date to place the facility on a schedule of compliance pursuant to its enforcement authority in Section 113 of the Act (42 U.S.C. 1857c-8). Plants all over the country are now operating under such orders, taking the steps required in their respective schedules to place them in compliance. Many of these schedules have been developed through negotiations between the plant owners and Respondent, and many of them have been formally

Response to Show Cause Order.

consented to by such owners. It is this approach which the Respondent intends to follow with respect to the Cos Cob plant.

It appears to be undisputed that Petitioners intend to close the plant as soon as the New Haven rail line can be converted to regular power service from Connecticut Light and Power, and actions are well underway to achieve that end. The principal question before this Court is whether firm, fixed date for the plant's compliance (i.e. shut down) will be established within the terms of the law, or whether determinations concerning the phasing out of a significant air pollution source will be made outside of the scheme that Congress dictated when it passed the Clean Air Amendments of 1970 (Public Law 91-604, 42 U.S.C. 1857 et seq.). That scheme, as specified by § 110 of the Act, is that all air pollution sources are to be subject to emission limitations and timetables for compliance with such limitations enforceable by the Respondent, Environmental Protection Agency (42 U.S.C. 1857c-5(a)(2)(B)). In most cases, the emission limits and compliance timetables are established by the States and approved by Respondent. but where, as here, the State is unable to meet these requirements of Federal law, the Respondent must establish both measures. Ordinarily in such cases the compliance timetable is established by rule, but here the infirmity of State law in not being authorized to regulate Petitioners' facilities came to light so late in the overall Congressional timetable for attaining clean air that the only means reasonably available to the Respondent for establishing a compliance schedule is an enforcement order. The overall Congressional timetable has now come to its end: mid 1975. But the Congress recognized that even at that date and later there would be sources not yet in compliance with emission standards, and therefore provided in Section 113 of the Act, the enforcement section, that admin-

Response to Show Cause Order.

istrative orders issued by the Respondent may specify a reasonable time for compliance. Respondent is confident that a reasonable date for compliance by this source, through shut down or whatever means, can be determined and specified within the governing statute, the Clean Air Act.

With respect to the claim of non compliance with the Executive Order and Office of Management and Budget Circular, Respondent offers in reply the affidavit of one of its officers, Roy Gamse, Director of the Economic Analysis Division. In addition, Respondent wishes to point out to the Court that the thought of the Inflation Impact Statement process is to require consideration of actions which will have an effect on a microeconomic scale. Hence the limiting of the Executive Order to "major proposals." In this connection, it must be understood that in no conceivable way could the economic impact involved in this source's compliance, clearly a microeconomic matter, be translated into a defineable effect upon inflation. (See the attached Affidavit.) Any other interpretation of the terms "major proposal" would effectively bring Federal environmental control actions to a halt.

As indicated by the attached affidavit, the Respondent has adhered to the terms of the Executive Order and the OMB Circular and is now operating pursuant to interim guidelines for Inflation Impact Statements pending final approval of these guidelines by the OMB. It now appears that the OMB will approve agency guidelines specifying threshold IIS limits somewhere between \$100 million and \$250 million.

Finally, Petitioners claim the regulation is founded in part upon an erroneous statement in the preamble regarding the nature of comments received at the public hearing on the proposed regulation. Respondent believes its characterization of the testimony is correct, but even assuming

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Response to Show Cause Order.

arguendo that the transcript is susceptible of other interpretations, an error of this sort would not go to the basic validity of the action which the Respondent has taken, which is simply to reinstate in the implementation plan a source which the State of Connecticut (and the Respondent in the approval of the original plan) had already determined was to be subject to the requirements of that plan.

Respectfully submitted,

MICHAEL A. JAMES Michael A. James

Alexander Kovel
Alexander Kovel
Attorneys, U.S.
Environmental Protection Agency

Of Counsel, Edmund Clark, U.S. Department of Justice

Affidavit of Roy Gamse.

CITY OF WASHINGTON (ss.:

Roy Gamse being duly sworn deposes and says:

- 1. I am the Director of the Economic Analysis Division, Office of Planning and Evaluation in the U. S. Environmental Protection Agency.
- 2. Executive Order 11821 and OMB Circular A-107 provide that until the Office of Management and Budget (OMB) approves Agency criteria defining major actions which require Inflation Impact Statements (IIS's) the Administrator shall be wholly responsible for determining which actions require IIS's. OMB has not yet approved EPA's proposed criteria.
- 2. The Administrator's determination in this case was based on interim criteria (applicable until OMB approves final criteria) provided in a February 24 memorandum from EPA's General Counsel and Assistant Administrator for Planning and Management (attached). The interim criteria provide that actions requiring either \$100 million in capital investment or \$50 million in annualized cost will be considered major actions requiring IIS's.
- 3. Compliance with this State Implementation Plan promulgation by Penn Central cannot conceivably cost this much. Conversion to the cleanest possible fuel would cost less than \$2 million in incremental costs if an extra \$30 per ton were required for combustion of 55,000 tons of coal or equivalent amounts of oil (the \$30/ton figure is a generous overestimate of any incremental cost which could be involved). Capital expenditures including cost of pollution control equipment required are unknown to EPA, but even using an extremely generous assumption of \$30 per kilowatt the total capital cost would be only \$2 million.

(Sworn to by Roy Gamse, June 26, 1975.)

Interim Procedures for Inflation Impact Statements.

[Emblem]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Washington, D.C. 20460

Feb 24 1975

OFFICE OF PLANNING AND MANAGEMENT

Subject: Interim Procedures for Inflation Impact Statements

FROM: Alvin L. Alm, Assistant Administrator for Planning and Management s/A.A. Robert V. Zener, General Counsel

To: The Administrator
Deputy Administrator
Assistant Administrators
Office Directors
Regional Administrators

In accordance with Executive Order 11821 and OMB Circular No. A-107 an Agency working group is developing guidelines for Inflation Impact Statements (IIS's) for the Agency's actions. Agency and OMB approval for these guidelines will take about six weeks. The OMB Circular requires that we currently certify that inflationary impact has been evaluated for each major action, even before adoption of these guidelines. The purpose of this memo is to lay some ground rules for meeting these interim requirements until the Agency and OMB formally approve a set of guidelines.

Interim Procedures for Inflation Impact Statements.

The preamble of the Federal Register notice for each "major" standard or regulation must stipulate that the Administrator certifies that the inflationary (or economic) impact has been evaluated. Proposed legislation must also be accompanied by such a statement. This certification must be well founded, but it need not be backed up with the same documentation as will ultimately be required after the guidelines are approved. There should be some backup analysis of costs and/or impacts; but a full-blown IIS documenting these impacts is not necessary. However, this backup analysis, even though it might be very rough, would have to be a part of the administrative record and would have to be provided upon request to OMB or the Council on Wage and Price Stability as well as the general public.

In the interim period we suggest that the following guidelines be followed to determine which actions require these certifications:

- o Only actions that are likely to result in capital investment exceeding \$100 million or annualized costs (including capital charges) of \$50 million will require certification.
- o The following actions do not require IIS's
 - -approval of State actions
 - -ANPRM s
 - -individual permits, compliance schedules, and enforcement orders
 - -funding of existing legislative programs (e.g., construction grants).

Interim Procedures for Inflation Impact Statements.

The working group is currently developing guidelines which include these provisions, but which contain other requirements as well. Most of your offices have representatives on this working group.

The chairman of the working group is Roy Gamse of OPM (202-755-0733). If you have any objection to using these interim procedures, please call Bill Frick (202-755-0753) on legal issues or Roy on other issues right away.

(59978)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN/9

SUBJECT:

Cos Cob Generating Station, Connecticut

DATE: May 22 1974

FROM:

Jeffrey G. Miller, Director, Enforcement Division

TO:

C. V. Smith, Jr., S. Ells, T. B. Bracken, M. Storlazzi, D. Kelly, M. Deland, T. Devine, J. Thompson, N. Accola

I had two telephone conversations yesterday concerning air pollution problems with the above facility, one with Henry Beal—and one with an unidentified source in the state's air pollution program.

Beal confirmed that the facility is owned by Penn Central and leased to the Connecticut Transportation Authority. Legislation creating the authority exempted it from all state regulations. State regulatory agencies interpreted this to be an exemption from the procedural but not the substantive aspects of their regulations. The state air pollution program presented a series of alternatives for bringing the facility into compliance with emission limitations to the Governor, but all were rejected. No further attempts to deal with the problem have been made in the last two years. In the meantime the City of Greenwich brought suit against the facility to enforce the emission limitations. The Supreme Court of Connecticut ruled about two weeks ago that the facility was exempt from substantive as well as procedural regulatory requirements. As a consequence, the facility is, in effect, read out of the SIP.

The unidentified source indicated that the reluctance of the source to comply with environmental regulations was typical of other state facilities. It indicated that Beck and Costle were unable to address the problem. The facility is apparently scheduled to close at the end of 1975 when the railroad cars which it powers with 25 cycle electricity will all be converted to use 60 cycle power, commercially available from United Illuminating or New England Power. The levels of assurance that the cars will all be converted by that date are varying, however, and rumor has it that conversion is proceeding slower than originally contemplated. In addition there is serious question whether UI or NEP will supply the needed electricity, in view of the quantity required and its peaking characteristics.

Action Required. Bob Thompson should get a copy of the court opinion (name unknown) from Dave Tunderman to confirm its implications. Air Branch should consider disapproving SIP to the extent that it doesn't cover the source and promulgating EPA regulation to cover it. Since state air program doesn't appear to be on top of the situation, a meeting should be arranged shortly with the state Department of Transportation to get latest facts. Contacts: Bud Shugrue, Deputy Commissioner of Transportation; John Gastler, Department of Transportation; Sue White, Governor's office. Who should take charge for EPA?

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

14

Control of air pollution from facilities owned, operated or under contract with the Connecticut Transportation Authority - BRITETING MEMORANDIM

DATE: April 9, 1975

BOM:

UBJEC I:

John A. S. McGlennon, Regional Administrator Region I

ro:

The Administrator

CHRU:

AX

SYNOPSIS

Enclosed for your signature is a <u>Federal Register</u> action involving the Connecticut Implementation Plan. This final rulemaking action disapproves the Connecticut State Implementation Plan insofar as it lacks the legal authority to control all sources within the state necessary for the attainment and maintenance of NAAQS and substitutes federal regulations to assure that Connecticut implementation plan regulations apply to all sources.

DETAILED SUMMARY OF ACTIONS

The Connecticut Implementation Plan was initially approved by the Administrator on May 31, 1972 (37 FR 1842). It was the intent of the Governor of the State of Connecticut and of the Administrator at the time of submission and approval that the Connecticut Regulations for the Abatement of Air Pollution, sections 19-508-1 through 19-508-25 inclusive, which are part of the SIP would apply to all sources within the State. However, when the state sought to apply these regulations to the Cos Cob Generating Plant, owned by the Penn Central Railroad and leased by the Connecticut Transportation Authority, it was determined by the Supreme Court in "Town of Greenwich vs. Connecticut Transportation Authority, et al", (Connecticut Law Journal, May 7, 1974 at p. 7) (Tab A) that facilities owned, operated or under contract with the Connecticut Transportation Authority were exempted by Connecticut. General Statutes 16-344 (Tab B) from the state implementation plan. Accordingly, on January 16, 1975, (40 FR 2832) (Tab C) the Administrator proposed to disapprove the state implementation plan insofar as the holding of the Connecticut Supreme Court meant that Connecticut lacked the requisite legal authority under 40 CFR 51.11(a). In the same notice the Administrator proposed to promulgate as a federal regulation applicable only to facilities owned or operated by the Connecticut Transportation Authority the identical regulations for the abatement of air pollution as were originally intended to apply to the Connecticut Transportation Authority. This action is necessary in order to assure that the state implementation plan applies to all sources necessary for the attainment and maintenance of national primary ambient air quality standards and to meet the requirements of section 110(c)(1).

COORDINATION AND PEVIEW

The rulemaking actions recommended herein were prepared with the cooperation and assistance of the Division of Stationary Source Enforcement.

RECOMMENDATION

That you sign the enclosed notice (Tab D) and forward it to the

Approve	•		 -
Disapprove		<u> </u>	
Date			

Enclosures

Tab A - Connecticut Law Journal, May 7, 1974, page 7.

Tab B - Connecticut General Statutes 16-344. (Excerpt)

Tab C - Federal Register of January 16, 1975 (40 CFR 2832).

Tab D - Federal Register Notice: Approval and Promulgation of Implementation Plans.

TITLE 40 PROTECTION OF PHATRONMENT

· Chapter I - Environmental Protection Agency

Subchapter C - Air Programs

Part 52 - Approval and Promulgation of Implementation Plans

CONNECTICUT

Control of Air Pollution From Facilities Owned, Operated or Under Contract with Connecticut Transportation Authority

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean

Air Act and 40 CFR Part 51, the Administrator initially approved the State

Plan for implementation of the National Ambient Air Quality Standards in

the State of Connecticut. The Administrator's approval of the Legal Authority

section of that Plan was based on the assumption that the State had the legal

authority required by 40 CFR 51.11, including authority to prevent construction,

modification or operation of any stationary source where emissions from such

sources would prevent the attainment or maintenance of a national standard.

Subsequently, the Connecticut Supreme Court ruled in "Town of Greenwich

v. Connecticut Transportation Authority, et al.", (Connecticut Law Journal,

May 7, 1974, at 7) that Connecticut General Statutes Section 16-344 exempts

facilities owned, operated or under contract with the Connecticut Transportation

Authority from the State Implementation Plan. Therefore, under the present

state of the law in Connecticut, the State does not have the legal authority

required by the Clean Air Act. In EPA regulation (40 FR 2832), the Administrator

proposed to disapprove the state implementation plan insofar as the state

lacked the requisite legal authority.

Section 110(c)(1) of the Clean Air Act directs the Administrator to publish proposed regulations to be substituted for any portion of a plan submitted by a state which he determines not to be in accordance with the requirements of section 110 of the Act, and to provide opportunity for a public hearing on the regulations to be substituted within such state. The proposed regulations would become a part of the state implementation plan if finally promulgated. On January 16, 1975 (40 FR 2832), the Administrator published the regulations proposed to be substituted which are identical to Connecticut Regulations for the Abatement of Air Pollution, Sections 19-508-1 through 19-508-25 inclusive, and gave notice of a hearing to be held on February 11, 1975 in Greenwich, Connecticut. Actual written notice was sent to interested parties and the Greenwich Times on January 9, 1975 carried a story amnouncing the public hearing on page one. The hearing on February 11, 1975 was adjourned immediately after it opened and reconvened on February 18, 1975. There was substantial testimony by local health officers, local residents and by representatives of the Connecticut Department of Environmental Protection that the Cos Cob Generating Plant owned by Penn Central and leased to the Connecticut Transportation Authority was frequently in violation of the applicable emission and opacity limitations. No person appearing at the hearing, or submitting testimony subsequently opposed the disapproval of the state implementation plan or the substitution of the proposed regulation by the Administrator. Representatives of the Connecticut Transportation Authority and of the Penn Central Railroad appeared, presented plans for the phasing out of the Cos Cob Generating Plant, and asked for a delay in the implementation of the regulation. The hearing provided for

adequate notice to and participation of the public.

Accordingly, on the basis of information produced at the public hearing and otherwise before the EPA, the Administrator hereby disapproves the Connecticut Implementation Plan insofar as the state lacks the legal authority control emissions from sources owned or controlled by the Connecticut Transportation Authority; and hereby further promulgates, as federal regulations for inclusion in the implementation plan, regulations identical to those originally intended by the implementation plan to apply to facilities of the Connecticut Transportation Authority. (42 USC 1857c-5)

Date	_	Administrator

Part 52 of Chapter I, Title 40 Code of Federal Regulations is hereby amended as follows:

Subpart H - Connecticut

- 1: In S52,377; paragraph (b) is added as follows:
- 852.377 Legal authority, and the same of the same
- (b) The requirements of \$51.11(a) of this chapter are not met because the State does not have the legal authority to enforce approved implementation plan regulations against facilities owned, operated, or under contract with the Connecticut Transportation Authority.
- A new 852.380 is added, as follows:
 852.380 Rules and regulations.
- (a) Connecticut Regulations for the Abatement of Air Pollution Section

 19-108-1 through 19-508-25 inclusive, as approved by the Administrator, shall

 apply in all respects to facilities owned, operated or under contract with

 the Connecticut Transportation Authority.
- (b) For the purposes of this section the word "Administrator" shall be substituted for the word "Commissioner".

the General Statutes. In bringing the plaintiff elected to sue the individual the board, as well as the board. Under 's writ, each member of the board and itself received individual service of ection 52-257 provides, in part: "The arty in any civil action in the superior the court of common pleas shall receive, indemnity, the following cums: For all before trial, fifty dollars; for the trial of law or fact, seventy live dollars." In L trixation of costs, the clerk awarded; nts to each of the nine members of the to the board, as a separate entity, totalor pretrial proceedings plus \$750 for fter the plaintiff's appeal from the taxats, the trial court reduced the award to Bill of Costs," i.e., \$50 plus \$75, to be ong the ten defendants. In their appeal ecision, the defendants contend that the f costs by the court was erroneous and inguage of § 52-257 should be read to award of the amounts enumerated thereof them.

mage of the statute itself is not precise.

If that the prevailing party may recover
ed sums, no guidance is given as to
ch party must be awarded the listed costs
these amounts are to be divided among
ties. Reading "prevailing party" as "preties," as the defendants suggest, pursuant
of the General Statutes, fails to clarify
The statute could still be read to require
t the specified amounts be distributed
prevailing parties or that these allowld be awarded to each of them.

axable costs [under the General Statutes] nally intended to be an approximation of the winning party of obtaining his legal syman, "Our Obsolete System of Taxable Conn. B.J. 148, 150. While the statutory sions have failed to keep pace with the n the actual expense of litigation, this grationale is controlling. In the proper recodefendants with countervailing interactions and present separate defenses adant would be entitled to indemnity in its provided by statute. Cf. Chambelis v. at Co., 93 Conn. 658, 659, 107 A. 495. In however, the defendants shared a common nd were represented by a single counsel.

that the defendants were entitled to be indemnified only to the extent of a single bill of costs. See Nichols v. Peck, 70 Conn. 439, 443, 39 A. 803.

Although the interpretation placed on § 59-927 of the General Statutes by § 342 of the Practice Book presents an exception to this holding, that statute and the Practice Book provision are inapplicable to this case by their own terms. Without a showing that the policies and logic behind § 342 should apply to the present situation, this provision cannot control the interpretation of § 52-257.

There is no error.

In this opinion the other judges concurred.

SUPREME COURT

March Term, 1974

TOWN OF GREENWICH v. CONNECTICUT TRANSPORTA-TION AUTHORITY, DEPARTMENT OF TRANSPORTATION OF THE STATE OF CONNECTICUT, ET AL.

Action for an injunction to restrain pollution of the environment by the operation of a power plant leased to the named defendant by the Penn Central Transportation Company and violation of the sanitary code of the plaintiff town, brought to the Superior Court in Hartford County, where the court, Wright, J., sustained the demarrer of the named defendant and the defendant A. Flari Wood, commissioner of transportation for the state of Connecticut, and, the plaintiff failing to plend further, the court, Radin, J., granted the plaintiff's motion for judgment and rendered judgment for the named defendant et al., from which the plaintiff appealed. No crror.

William T. Lapcevic, with whom was A. William Mottolese, for the appellant (plaintiff).

Clement J. Kichak, assistant attorney general, with whom, on the brief, was Robert K. Killian, attorney general, for the appellees (named defendant et al.).

John D. Kernan appeared for the appelless (defendant trustees of the Penn Central Transportation Company).

.. ONLY COPY AVAILABLE

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provisions of the Environmental Protection Act of 1971 (\$\xi\$ 22a-14 to 22a-20 of the General Statutes)' against the state of Connecticut and the Connecticut Transportation Authority in their operation of the Cos Cob railroad power plant under an agreement which, pursuant to \$16-344,' is exempt from "state regulation."

The facts relevant to the determination of this issue are undisputed and may be briefly summarized. On June 26, 1972, the plaintiff brought an action against the defendants; the Connecticut Transportation Authority and the commissioner of transportation, seeking injunctive relief against emissions from the Cos Cob power plant which allegedly violated the sanitary code of the town of Greenwich, the public health code of the state of Connecticut and the Environmental Protection Act

The plaintiff brought its action pursuant to § 22a-16 and sought the relief established by \$ 22a-18. The two statutes read as follows: "[General Statutes] Sec. 22a-16. ACTION FOR DECLARATORY AND EQUITABLE RELIEF AGAINST POLLUTION. The afterney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the county wherein the defendant is located, resides or conducts business, except that where the state is the defendant, such action shall be brought in Hartford county, for declaratory and equitable relief against the state, thy political mudivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the nir, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

"[General Statutes] Sec. 22a-18. rowers or court. (a) The court may grant temporary and permanent equitable relief, or may impose such conditions on the defendant as are required to protect the public trust in the air, water and other natural resources of the state from unreasoundle pollution, impairment or destruction. (b) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court in its discretion may remand the parties to such proceedings. In so remanding the parties the court may grant temporary equitable relief where necessary for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction and the court shall retain jurisdiction of the action pending completion of administrative action for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole (c) If the agency's consideration has not been adequate, and notwithstanding that the agency's decision is supported by competent material and substantial evidence on the whole record, the court shall adjudicate the impact of the defendant's conduct on the public trust in the air, water or other natural resources of the state in accordance with sections 22a-14 to 22 -20, inclusive. (d) Where, as to any administrative, licensing or other proceeding, Judicial review thereof is available, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review."

"[General Statutes] Sec. 16-344. FEEMPTION FROM STATE EVEULA-TION. Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation of 1971. The Cos Cob power plant is located at Co Cob, within the geographical limits of the town o Greenwich, and generates electric power which oper ates a portion of the Penn Central Railroad.

On July 11, 1972, the defendants demurred to the plaintiff's complaint on several grounds, one o which was that § 16-344 exempts from state regula tion the operation of railroad service under contract with the Connecticut Transportation Authority. O. August 31, 1972, the plaintiff moved to amend it writ and complaint to add the l'em Central Trans portation Company (Penn Central), the operator o. the Cos Cob power plant, as a party defendant Leave to join the Penn Central as a party defend ant having been granted by the United States Dis trict Court for the Eastern District of Pennsylvania. the plaintiff's motion was granted, the Penn Central was cited in as a party defendant and filed an answer to the plaintiff's complaint. On June 29, 1973, the Superior Court sustained the demurrer of the original defendants on the ground that § 16-344 created an exception to § 22a-18. The plaintiff has appealed to this court from the judgment rendered after the court sustained the defendants' demurrer.

The resolution of this appeal quite obviously depends upon an interpretation of the term "state regulation" as used in § 16-344. If the relief sought by a cause of action maintained by virtue of the Environmental Protection Act of 1971 constitutes such regulation, then clearly the special provisions of \$16-344 conflict with the general provisions of the Environmental Protection Act. In such a case, as was pointed out by the trial court, the rule of statutory construction delineated in Baker v. Baningoso, 134 Conn. 382, 385, 58 A.2d 5, would apply: "'[I]f one of two enactments is special and particular and clearly includes the matter in controversy, whilst the other is general and would if standing alone, include it also, and if the inclusion of that matter in the general enactment would produce a conflict between it and the special provisions, it must be taken that the latter were designed as an exception to the general provisions.' Weatworth v. L. & L. Dining Co., 116 Conn. 364, 369, 165 A. 203." In terms of the specific situation presented herein, the operation of the railroad power plant, by virtue of § 16-344, would be exempt from the relief sought by the plaintiff's cause of action as an exception to \$\$ 22a-16 and 22a-18.

We find this to be the case, "The words used [in a statute] are to be construed according to their commonly approved usage. General Statutes § 1-1; Hardware Mutual Cosmitty Co. v. Prema, 157 Co. 2

209, 214, 214 A.2d 903; Baker v. Norwalk, 152 Com. 312, 315, 206 A.2d 428. Or, stated another way, statutory language is to be given its plain and ordinary meaning State v Taylor, 153 Com. 79, 89, 214 A.94 362. Kiapproth v. Turner, 156 Conn. 276, 280, 240 A.2d SSG." Windham Community Memorial Hospital v. Willimantic, 163 Conn. (35 Conn. L.J., No. 36, pp. 13, 15). Webster's Third New International Dietionary defines "regulation" as "an act of regulating or the condition of being regulated." "Regulate," is defined as meaning "to govern or direct according to rule; ... to bring under the control of low or constituted authority." (Emphasis added.) "Regulation connotes . . . the power to permit and control as well as to prohibit"; Yale University v. New Haven, 104 Conn. 610, 625, 134 A. 268; and "infers limitations." Hartland v. Jensen's, Inc., 146 Conn. 697, 702, 155 A.2d 754.

The state public health code and the sanitary code of Greenwich are, by any reasonable application of the definitions given above, and by the express wording of the statutes authorizing their promulgation, exercises in "regulation." See General Statutes \$\$ 19-13, 19-80. The Environmental Protection Act of 1971 clearly was a legislative attempt to bring the ever-growing problems of air and water pollution "under the control of law." That act, in its declaration of policy, specifically found and declared that there is a "public trust in the air, water and other natural resources of the state of Connecticut." (Emphasis added.) § 22a-15. Through the medium of actions authorized by § 22a-16 the legislature sought to apply "limitations" on the "unreasonable pollution, impairment, or destruction" of those natural resources, or, in other words, to regulate those enumerated evils.

It could be argued that because the Environmental Protection Act of 1971 thid not place complete regulator; authority over various forms of pollution within a traditional regulatory agency, but instead conferred standing to sue on a wide variety of agencies, municipalities and other entities, including "any person," it cannot be said to establish "state regulation." We are of the opinion, however, that \$ 22a-16 is an example of a legislative enactment of what has been described as the expanding doctrine of "private attorney generals," who are empowered to institute proceedings to vindicate the public interest. See, e.g., Associated Industries v. Ickes, 131 F.2d 694, 704 (2d Cir.), dismissed as moot, 320 U.S. 707, 61 S. Ct. 74, 88 L. Ed. 414; 3 Davis, Administrative Law Treatise § 22.05. By utilizing this procedure, the legislature expanded the number of potenon the limited resources of a particular agency. That this is the case is demonstrated by the provisions of § 22a-20, which states, in part, as follows "Sections 22a 14 to 22a 20, includive, shall be supple mentary to existing administrative and regulator procedures provided by law and in any action main tained under said sections, the court may reman the parties to such procedures." (Emphasis added. The mere fact that the Environmental Protectio Act of 1971 allows towns or private citizens to initiate proceedings, for example, to enforce publishealth codes, does not prevent the act from constituting "state regulation."

The plaintiff urges upon this court's more restrictive view of the term "state regulation," and apparently relies heavily upon the ruling of the Unite States Supreme Court in Huron Portland Comen Co. v. Detroit, 362 U.S. 440, 80 S. Ct. 813, 4 L. Ed. 2852. While that case dealt with the constitutionality of a local smoke abatement code in light of the interstate commerce clause of the United States constitution and is thus inapposite to the case at hand, it is interesting to note that even the language of the case (p. 443) depicted the code as "local regulation to effectuate a legitimate local public interest." (Emphasis added.)

The plaintiff nonetheless maintains that the cor rect interpretation of § 16-344 is that interstate rail road service operated under compact is exempt only from control of the management of the roads or the fixing of rates which may be charged by the service The obvious weakness in this argument is that no such limitation is expressed in § 16-344, whereas it predecessor statute, Public Acts 1967, No. 474 which was repealed with the passage of § 16-32 (Public Acts 1969, No. 46, § 3), did expressly state that the service operated pursuant to the con tract was exempt from federal and state regulation of "rates and schedules of service." The obviou legislative intent was to expand the exemption beyond the narrow confines of those specific area: of regulation.

The plaintiff finally argues that the definition of "regulation" found within the Uniform Administrative Procedure Act' (hereinafter UAPA) (General Statutes chapter 54) is the applicable one and that the major purpose of § 16-344 is the exemption of

^{*}General Statutes § 4-106 defines the term "regulation" as "ear agency statement of general applicability that implements, interprets, or preceibes lew or policy, or describes the organization, precedure, or practice requirements of any agency. The term include the amendment or repeal of a prior regulation, but does not include (1) statements concerning only the internal manageme : of an agency and not affective minute violate violate.

railroad service operated under compact from the procedural confines of the UAPA. This contention is without merit. The exemption established by § 16-344 was enacted and in effect before the passage of the UAPA, which went into effect on January 1, 1972. Moreover, mindful, as we must be, of the directive of § 1-1, we cannot impact to the legislature the quantum of linguistic imprecision necessary for it to mean "regulation" as defined in 4-166 by its use of "state regulation", within the context of § 16-344, as the plaintiff would have us do.

Greenwich does not in any way serve to obtascate what appears to be the clear intent of the legislature specifically to exempt those responsible therefor from state regulation of the type sought by this action.

There is no error.

In this opinion House, C. J., Shapiro and Loiselle, Js., concurred.

BOGDANSKI, J. (dissenting). The proper interpretation of General Statutes § 16-344 is not so clear to me as it appears to the majority. In my judgment § 16-344 exempts the defeadants from state regulations which apply specifically to transportation but not from an action brought under the Environmental Protection Act of 1971 to enjoin air pollution. I do not believe that the General Assembly meant to exclude railroad passenger service from the environmental obligations which it imposed uniformly throughout the state.

This state entered into the Railroad Passenger Transportation Compact with New York "for the purpose of providing for the continuation and improvement of essential interstate railroad passenger service." General Statutes § 16-343. The compact authorizes the Connecticut Transportation Authority, in cooperation with the Metropolitan Transportation Authority of New York, to acquire, repair and dispose of railread assets, to operate railroad passenger service or contract for the operation of that service by others, and to abandon portions of that service when advisable. General Statutes § 16-343. Neither the compact ner the State Transportation Act, General Statutes \$\\13b-1--13h-23, empowers the Connecticut Transportation Authority to assume responsibility for pollution control or environmental protection. Along with the compact the General Assembly enacted General Statutes § 16-344: "Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation Authority shall be exemni from state resultation "

I agree that the action brought by the town of Greenwich to restrain air pollution under the Environmental Protection Act of 1971 falls within the broad category of "state regulation." But the precise question is whether the control of air pomption from a railroad power plant operated under contract with the Connecticut Transportation Authority is "state regulation" of "mass transportation" or of "railroad service" so as to be prohibited by § 16-344. The regulation of railroad power plant emissions is a function entirely different from the regulation of railroad "transportation" or "service." Arguably, however, the language of (16-3% must be construed broadly so as to bring pollution control measures within its scope because such measures may ultimately impiage on passenger service operation. The statute is not completely unambiguous. We must, therefore, seek to ascertain the legislative intent by looking to the policy and the legislative history of § 16-344, to other enactments which bear on its construction, and to relevant features of New York's enactment of the compact. Cicala v. Administrator, 161 Conn. 362, 365, 288 A.2d 66; United Aircraft Corporation v. International Assn. of Machinists, 161 Conn. 79, 85, 285 A.2d 330; State v. Cataudella, 159 Conn. 544, 552, 271 A.2d 99.

The legislative history does not support a broad reading of the scope of the exemption contained in § 16-344. That section is not a part of the railroad passenger transportation compact itself. The General Assembly enacted § 16-344, together with the present compact, in 1969, simultaneously repealing the original compact of 1967. Public Acts 1969, No. 46. The 1967 compact, which differed from its successor primarily in wording, actually contained an exemption provision. That provision read: "Upon approval of this compact by the United States Congress, railroad passenger service operated pursuant to this compact shall be exempt from feder and state regulation of rates and schedules of service." Public Acts 1967, No. 474, art. 1V, § 2.

Significantly, the House and Senate reports do not contain any explanation for the substitution of the general language of \$16-344 for the more specific language of the 1967 exemption provision. The only explanation to be found anywhere in the legislative history of Public Acts 1969, No. 46, for the repeal of the original compact was the necestity to conform the precise language of the Connecticut version with the language of the version which New York had just enacted in 1968, 13 S. Proc., Pt. 2, 1969 Sess., p. 787; Hearings before the Joint Standing Committee on Transportation, 1969 Sess., pp. 7, 20. The new exemption provision was not added for that reasons however because Yang Vicin in a provision was not added for that

such a provision either in its version of the compact or apart from it. See N.Y. Transp. Law, App. 5, \$6 1-3. From all that appears, therefore, \$ 16-344 was merely a modification of the original exemption provision, designed to assure that state transportation regulations would not interfere with the management of railroad passenger service by the Connecticut Transportation Authority. The original exemption from state regulation of "rates and ... schedules of service" may have been coasidered too niodest to scence that purpose in view of the manifold aspects of reilroad operation. But there is no reason to believe that the General Assembly intended to exempt compact activities from otherwise applicable uniform police power enactments not specially related to transportation.1

The broad interpretation of § 16-314 adopted by the majority is implausible as well as unsupported To be consistent the by the legislative history. majority would have to concede that \$ 16-344 exempts compact activities from a veritable host of statutes. For instance, the construction approved by the majority implies that statutes forbidding discrimination in employment do not apply to compact activities; nor do state fire safety and building codes; nor does the penal code. Those statutes and codes are also forms of "state regulation," as applicable to compact activities as the public health code and the Environmental Protection Act of 1971. I cannot believe that the General Assembly intended § 16-344 to have such bizarre results. "When a statute is ambiguous in terms and fairly susceptible to two constructions, one of which will avoid an absurd or ridiculous consequence, a court is warranted in assuming that the legislative intent was to attain a rational and sensible result. Saye-Allen Co. v. Wheeler, 119 Conn. 667, 679, 179 A. 195; United States v. Bryan, 239 U.S. 323, 338, 70 S. Ct. 724, 94 L. Ed. 884." Bridgeport v. Stratford, 142 Conn. 634, 614, 116 A.2d 508.

My view of the proper interpretation of § 16-344 is also buttressed by a comparison with the New York cuactment of the compact. New York expressly provided for the nonexemption of compact activities from state regulation: "Metropolitan transportation authority shall exercise all the

powers and perform all the duties conferred or imposed upon it parsuant to any provision of the foregoing compact in conformity with and pursuant to the provisions of title eleven of article five of the public authorities law, as amended [establishing the authority], and all other laws of the state of New York governing or regulating its creation, existence and activities." N.Y. Transp. Law, App. 5, \$2. The New York approach suggests that the goals of the compact can be achieved without constraint § 16-349 to exceep compact activities from the requirements of the Environmental Protection. Act and similar police power enactments which do not pertain specifically to transportation.

Finally, the interpretation which the majority places on § 16-344 conflicts with the obligations which Connecticut assumed in 1967 under the Mid-Atlantic States Air Pollution Control Compact, set out in General Statutes § 19-523. Both Connecticut and New York are signatories to that compact. The compact states that "the signatory parties recognize that the protection and improvement of the quality of their common atmosphere is vested with local. state and national interests, for which they have a joint responsibility." Accordingly, the compact creates an interstate agency, the mid-Atlantie states air pollution control commission, which is empowered to investigate the causes and sources of air pollution, to establish air quality and emissions control standards, and to issue orders to cease and desist from any emissions in violation of its rules. General Statutes § 19-523, art. 3, § 2.1, art. 4. \$\$ 4.1, 4.3, art. 5; \ 5.2. The commission may enforce its orders by bringing an action in "any court of competent jurisdiction." General Statutes | 19-523. art. 4, § 4.3. The compact further provides that violations of any compact provision or commission regulation or order "shall be punishable as may L provided by statute of any of the signatory parties within which the offense is committed." General Statutes § 19-523, art. 4, § 4.5. Lastly, "[e]ach signatory party pledges faithful cooperation in the control of air pollution in the region and consistent with such object to enact (or if enacted, to keep in force and where necessary to amend) laws which will: (a) Enable it to secure and maintain standards

^{*}Elsewhere the General Assembly explicitly limited the availability of exemptions from air pollution regulations. General Statutes \$19-519 states: "Any person who owns or is in control of any plant... hay apply... for a permit granting an exemption ... from regulations... governing the quality, nature, duration or extent of discharges of air pollutants... The commissioner may grant such permot if he finds that the discharges... do not constitute a danger to public health or safety, and compliance with the regulations from which exemption is smooth made to the safety.

^{*}Title cleven does coatain some limited exceptions from regulation for activities of the Metropolitan Transportation Authority; 100 instance, "local laws, resolutions, ordinances, tules and regulations of a municipality or political subdivision... conducting with this title or any rule or regulation of the authority, shall not be applicable to the activities or operations of the authority, or the facilities of the authority, except such facilities that are devoted to parpute other than transportation purposes.... The jurisdiction, prevision, powers and duties of the department of transportation of the

of air quality at least equal to those prescribed by the commission; (b) accomplish effectively the objectives of this compact, and enable its officers, departments, boards and agents adiafactorily to accomplish the obligations and duties assumed by the party under the terms hereof? General Statutes § 19-523, art. 6, § 6.2.

I am unwilling to believe that the General Assem-Firebly intended to insulate activities; under the railroad passenger transportation compact from air. . . pollution controls in contravention of the contrary obligations incurred by Connecticut under the air -pollution control compact. The legislature is pre--- sumed to intend that its enactments be read in light of existing relevant statutes so as to make one consistent body of law. Cicala v. Administrator, 161 Conn. 362, 365, 288 A.2d 66. That presumption is especially strong when a statute may be interpreted to be inconsistent with obligations solemnly undertaken by the state as a party to an interstate Nothing in the specific language of \$ 16-344 or in its legislative history requires an interpretation of that section which conflicts with the air pollution control compact.

In conclusion, I am persuaded that the exemption from state regulation contained in General Statutes § 16-344 should not be construed to prohibit the suit brought under the Environmental Protection Act of 1971 by the town of Greenwich in this case.

I would find error, set aside the judgment, and remand the case with direction to overrule the demurrer and proceed in accordance with law.

SUPREME COURT

January Term, 1974

STATE OF CONNECTICUT v. LOUIS L'HEUREUX

Information charging the defendant, in the first part, in three counts, with the crimes of being an accessory to the sale of narcotics and possession of narcotics, and, in the second part, with being a second offender, brought to the Superior Court, in New Hayen County, where the issues under the first part of the information were tried to the jury before O'Sullivan, J.; verdict of guilty on the three counts in the first part and, the defendant having pleaded guilty to the second part, the court rendered judgment of guilty under both parts; from that

Jonathan E. Silbert, for the appellant (defendant).

Jerrold II Rarnett, assistant state's attorney, with whom, on the brief, was Arnold Markle, state's attorney, for the appellee (state).

Loisian, J. In a two-part information, the defendant was charged, in the first part, with two counts of assisting abetting and counseling the sale of heroin by another and one count of possession of heroid. The second part of the information charged the defendant with being a second offender. A jury returned a verdict of guilty on the three counts in the first part and the defendant thereafter pleaded guilty to the second offender charge. He has appealed from the judgment rendered on the verdict and plea.

The defendant claims seven grounds of error in his brief but they may be considered under three distinct issues: (1) whether error was committed by the court in its denial of a pretrial motion to dismiss the first count; (2) whether error was committed when the court permitted the state in its cross-examination of the defendant to inquire into two prior convictions for nonsupport; and (3) whether the court's denial of the defendant's motion to dismiss, made after the close of the state's ease, was error.

The state claims to have proved that the defendant, the owner of the Nite-Life Restaurant in New Haven, gave his employee. Jeseph Yedynah, Jr., heroin to sell for him. On May 15 and May 18, 1970. Yedynak made sales of heroin to undercover officers of the regional crime squad. Officers of the New Haven police department raided the Nite-Life Restaurant on May 19, 1970, and seized a quantity of narcotics and narcotic paraphernalia on the premises.

In his first motion to dismiss, which was addressed only to the first count, the defendant claimed that he was denied his rights to due process of law and to a speedy trial. No such claim was made as to the other two counts, which charged offenses allegedly committed within three and four days respectively from the offense alleged in the first count. Although the denial of a motion to dismiss is ordinarily not assignable as error; State v. Peag, 165 Conn. (35 Conn. L.J., No. 20, p. 3); the defendant's claim will be discussed because it invoives "a fundamental constitutional right." Klapfer v. North Carolina. 386 U.S. 213, 223-26, 87 S. Ct. 988, 18 L. Ld. 2d 1; page 25 days at Engage 165 Conn. CL. Conn. L.J.

Section 16-344, enacted in 1969, involved a special exclusion of "compact" activities from state regulations.

Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation Authority shall be exempt from state regulation." from state regulation."

Section 16-3:4, enacted in 1969, involved a special exclusion of "compact" activities from state regulation:

We want to from state regulation; who were the transfer of the state o

Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation Authority shall be exempt from state regulation."

ylded in \$1553 may file a complain. In court as provided in 5 USC, 552(a) (4). The district court review is designed to follow final action at the agency head

12. Section 1.559 is added to read as

§ 1.559 Annual report to Congress.

(a) On or before March 1 of each calendar year the Administrator will rubinit a report to the Epoder of the Happe of thepre on diversion the Pre-iall of the than to for reterred to the apprepriets committees of the Courtes, Abx The report will be compiled by the Controller and will include:

(i) The number of determinations made by the Vertrans Adequation not to come by virtage posts for reserving made to the Vetering Administration under \$ 1.559 recies and the reasons for cach such det. imination.

(2) The number of appeals made by percons under § 1.550 reries, the result of such appeals, and the reason for the netion upon each appeal that results in a denial of intermation.

(3) The names and title or positions of each person responsible for the denial of records requested under \$ 1.550 series, and the number of instances of partici-

pation for each. (4) The results of each proceeding conducted pursuant to 3 U.S.C. 552(a) (4) (P), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of every regulation made by the Veterans Administration regard-ing 5 U.S.C. 552.

(6) A copy of the fee schedule and the total amount of fees collected by Veterans Administration for making records aveilable under 5 U.S.C. 552.

(7) Euch other information as indicates efforts to administer fully 5 U.S.C.

Approved: January 13, 1975.

By direction of the Administrator.

OPELL W. VAUGHE. Deputy Administrator.

[TT Der. 73-1175 Dated 1-15-77: 5:45 am]

ELIVIRONMENTAL PROTECTION AGERICY [40 CFR Part 52]

[FRE :35-4]

COMMECTICUT

Central of Air Pullution From Facilities Overed, Operated or Unifer Central t With Connecticut Transportation Authority

On May 31, 1972 (47 Fit 10812), pursuant to rection 110 ct the Clean Air Act and 40 Chit Part 51, the Administrator initially approved the fit ite Plan for implementation of the Mational Ambuent Air Quality Blandards in the State of Connecticut. The Administrator's apTAB-C

Lof the Let L Authority section of the Plen ves beset on the posimption that the State had the legal authority required by 40 Call 51.11, including authority to prevent construction, medifi-cation or operation of any stationary source where the commercial source will brevent the attrament or maintenance of a national standard.

Enbrequently, the Connecticut Su-preme Court rol d in "Town of Greenwich v. Comestant Transportation Aunot, 2109 7, 1971, at 7) that Connection G. he alidatut after in 16-211 exempt Lethted owned, or ented or under contract with the Comsettent Transports that with the Commentent Transports, then Authority from the State Implemen-tation when Therefore, ander the present state of the law in Connecticul, the required by the Carn Ale Act and EP? re-ulations to control a group of facilre difficulty to Control of the property of the sectodled by the Citate in recordance, with the later's Implementation From the for as such facilities are exempt from the Connecticut Implementation Plan, the Plan does not meet the requirements of 40 CVR 51.11(a) and EPA hereby proposes under authority of Section 110 of the Act, to disapprove them to that extent.

Section 110(2) (2) of the Clean Ai: Act directs the Administrator to publish proposed regulations to be substituted for any vortice of a plan submitted by a state which he determines not to be in accordance with the requirements of section 110 of the Act, which regulation. shall become a part of the state imple-mentation plan. The Administrate. hereby proposes to promulgate regulailons spoils the to all Connection Transportation Authority facilities which regulations are identical to Connecticut Regulations for the Abatemen of Air Poliution Sections 19-500-1 through 19-500-25 inclusive.

Copies of the regulations which are being proposed are available for publi inspection during normal business hours at the Office of Public Affairs, TPA, Itoon 2203, John P. Kennidy Building, Bestor Mora dancers times, and at the M. Completine Unit, Competitive Dipartment of Environmental Protection, State

Notice is here! walven of a public hearing concerning the proposed regulation to be held on February 11 of 3 p.m. Town Hall, Gr. awaich, The hearing will be conducted informativ. Technical rule of evidence will not supply. Interesto persons wishing to make a statement a the hearing vall to a forced the opportimity to do ... statement will be immed, Such person are requested to the a notice of their inthan fifteen cass prior to the hearin and, if production to a submit five copie of the proposed statement to the Remental Prefection Agency, Region I JUST Building, Boston, Margachinett 02203. Interested parties are also invites

of \$1.500a). 9. Section Table is revised to read as

(4) Where the Veterans Ada, date

tion undertaken to perform for a re-

which are very clearly not required to

he performed under rection 552, title 5, United Dates Code, either voluntarily or becaule such services are required by

enter other law to a the formal certifi-

cation of record; es true copies, attesta-

tion under the real of the astency, creation of a new hat, etc.), the question of

charging fers for such tervices will be determined by the official or de lance authorized to release the information

under 11.56, in the light of the federal

ther charte statute, bi U.S.C. doda, chy

other applicable lew and tim providence

\$ 1.556 Requests for other reasonably described record ..

** Each department, staff office, and field station head will destinate an em-ployeets) who will be responsible for initial action on frientian or deaying) requests to import or obtain mormation from or copies of records under their jurisdiction and within the purview of 1.553. This responsibility includes maintaining a uniform listing of such requests.

Data located will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. Any legal question arising in a field station concerning the release of information will be referred to the appropriate District Counsel for disposition as contemplated by 3 12.401 of this chapter. In Central Office such lead questions will be referred to the General Coursel. Any administrative question will be referred through administrative chan-. nels to the apprepriate department or staff office head. All denials or proposed denials at the Central Calco level will be coordinated with the Director, Information Service as well as the General Counsel.

10. Section 1.557 is revised to read as follows:

\$ 1.557 Administrative review.

(a) Upon dental of a request, the responsitti Veterana daminis tration orderal or designated employee will interm the requester in wilden of the denial, ente ie specific enemption in \$ 1.554 upon which the dental is based, set forth the names and titles or positions of each person responsible for the demial of such request, and advice that the denial may be appealed to the Administrator.

(b) The intal actney decision in such appeals will be made by the Administrator or Deputy Administrator.

11. Section 1 553 is revised to read as follows:

\$ 1.558 Judicial review.

Any person from whom the Veterans Admin.b.tration has withheld information or records after proper request as pro-

PROPOSED RULES

to participate in this rulemaking by submitting written compents, preferably in triplicate, to Mr. Thomas Device, Chief, Branch, Region I, U.S. Environmental Protection Agency, J. P. Achded, Pederal Building, Boston, Mersachusel's 02203. All comments received within 39 days of the publication of this proposal will be considered.

A copy of all public connecuts will be available for impection at the Office of Public Afters, Region I, U.S. Environ-Anonal Protection Albusy, Room 3303, J. F. Kennedy Federal Building, Boston, Massachu ett: 02203.

"(Me., 116(*); Cio.m Air Act. Gachmended, 612 "D.S.C. 1. in 5(c)))

Dated: January 8, 1975.

Jour Outstand. Acting Administrator.

Part 53 of Chapter 1, Title 40 Code of Federal Regulations is hereby proposed to be amended as follows:

Subpart H-Connecticut

1. In § 52.377, paragraph (b) is added as follows:

\$ 52.377 Legal authority.

(b) The requirements of \$ 51.11(a) of this chapter are not met because the enforce approved implementation plan regulations against facilities owned, op-erated, or under contract with the Connecticut Transportation Authority.

2. A new \$ 52.350 is added, as follows: § 52.380 Rules and regulations.

Connecticut Regulations for the Abatement of Air Pollution Section 19-503-1 through 19-508-25 inclusive, as approved by the Administrator, shall apply in all respects to facilities owned, opcrated or under contract with the crated

[FR Doc.75-1545 1 Hed 1-15-75;0:45 am]

[40 CFR Part 52] [FPL 322-6]

REVISIONS TO HEAV JEDSTY THAMSPOR-TAYION CONTINUE THAN AND PLACE FOR ATTAINMENT AND PARTIES OF FUR ORDERS IN NEW JEDSEY

Hotice of Public Hearing

On October 3, 1774 (20 Fit 35606), the Administrator published in the Process. REGISTER a notice which announced a proposed plan for attainment and maintenance of the national accomiary standard for sulter existes. In this notice of proposed julemaking the Administrator Elanified his Intention of Bolding a public hearing on the proposed plan and indicated that such hearing would be held no somer than 50 day, I, flowing publication of the notice of proposed internating.

On Hovember 15, 1971 (39 148 40306), IPA published in the Fronza, Preister two proposed regulations for the New Jersey Transportation Control Plan.

These proposed regulations are \$ 50,1586. Heavy-duty retroft, and 152,15%, Organic muterials, Also in this Frances, Rice-Larr notice EPA proposed to amend tion and maintenance, to provide for Contations inspection of heavy-only, natoline-fueled vehicles. In this notice of proposed rulemaking, the Administrator in-dicated that public hearings would be held to somer than 20 days following

publication of the proposed rule In addition, on October 16, 1971 the Commissioner of the New Jersey fante Department of Environmental Protection raignitied to the U.S. Phylogenetical respection of the U.S. Phylogenetical Agency (EPA), U.S. reff is a to N.J.A.C. 7:27 E. Let sea, Control and Problettion of Air Pollution from 15 in-Duty Gasoline-Puried Motor Vehicles, There revisions deby implementation of Phores II and D1 of the emissions inspecifica program from July 1, 1974 and July 1, 1975 to February 1, 1975 and Febuary 1, 1975, respectively, and ollow an exemption from the program for any pre-1968 model year vehicle or classification of light-duty gasoline-fucked vehicles. Even though EPA public hearings are not required on this subject, since the State already held hearings, EPA, will also entertain comments on the above subject in order to gather more data for the FPA final dicision.

As was previously amnounced in the "Tranton Times" of January 10, 1975 and the "Newarl: Star Ledger" of January ary 1, 1975, the dates, timez, and places when the public hearings on these propossis for the Re., Jersey plan will be held are the following:

NEW JERSET

January 20, 1975 at 10 a.m. 18: Floor Auditorium Realth & Agriculture Building John Flich Plara Trenion, New Jersey January 21, 1975 at 10 a.m. ocin 312--Cultere Center Newark College of Engineering 150 Bleeter Street mrk. New Jer. 5 Hearing O.Seer: Paul Bermingham

Persons wishing to participate in the public hearing should specify their in-tentions to the Re, a nal Administrator or controt the hearing officer of the site and time of the partie hearings.

Copies of the material which will be Copies of the inderial which will be considered at the public hearing are available for public hispection at the Preedom of Information Center, 401 M Street, 5W., W.e him.ton, D.C. 20100 and at the Renion H Cace, 26 Federal Praza, New York, New York 10007, Reom 502, Public comments on the preparate Public comments on the proposals under consideration can be submitted to the Regional Administrator, U.S. Environmental Presection Agency, Room 1900, 26 Federal Plaza, New York, New York 10097. Comments received before Pebruary 15, 1975 will be considered.

Dated: January 11, 1975.

Enwann P. Ten ast, Acting Assistant Administrator for Air and Waste Management. [PR Doc.75-1651 PRed 1-16 76,8:67 am] [40 CFR Part 429] [FHT. 321-6]

TIMER PRODUCTS PROCESSIO POINT SOURCE CATE GORY

Proposed Effluent Linetations and Guidelin.

Notice is hereby riven that the Environmental Protection Acetey (12A) is proposing to amend 49 CFR 429-Timber Products Processing Poor, Source Category, Subpart 1-Wet Storage Cabodegory, 35 500 52, 422.03 and 422.05 as set forth below: 40 Crist 425 was promulgated on April 16, 1974 pur-grant to arctions 301, 75 (b) and tor, 207(b) 21/1/207(c) of the Peneral Ways U.S.C. 1251, Poll, 1511 the and text 1216th and 1217ter; is Slat, 516 ct (23.17cb, L. 92-500 the last)

During the development of Subject I. it was determined that the information available to the Agency was not pre-sented in a form adequate to proof. limitations and standards on the biolegically related parameters measurable in coluents from wet store ce operations. Because of the time constraints on the Agency as a result of the order by the Federal District Court for the District of Columbia entered in Ratural Re-sources Defense Council, Inc. v. Train (Cv. No. 1609-73) regulations are below concurrently promulated for Subset.

I. The regulations being promulated include limits only on particle size silowed to be discharged and pli.

Additional anlaysis of the data available and the collection and analysis additional information has decerment that it is icasible to propose immention on the allowable level of discharge t biochemical oxygen des and concentrations from wet storage facilities.

It is recognized that a vet storage operation can serve as a historical type treatment system if there is adopted detention time. It is also recognized wel storage water bother are utilized a erated by other open. . . . in products proceeding facilities, Pellatare discharged to wet size, a water have from men operations as 1.00 s.vi. wash the vencer over the letter in the trie life is the later and fabrication operations in have an adverse effect on receiving

Evaluation of data in it a number of wet storage bodies indicates that chemical oxygen demand (2003) leve average less than 40 reg/1 with only 6...

of 40 | data points from cr than 70.

On the basic of this information it :
proposed that Subpart 1 by modified : include a 1:0D5 limitation of 59 no concentration in process waste wate discharge

Interested persons may participate ! this relemaking by remaint or vertconnecut: in triplicate to the 1PA in formation Center, Environmental Protetion Agency, Washin ton, D.C. 25th Attention: Mr. Philip H. Wassam, Cor ments on all respects of the proposed re Wallars bre inhelted. In the event cerments are in the nature of criticana. (a) Visible emissions. (a). (1) Visible emission restric-

tions for stationary sources.

(i) No person shall cause or permit the emission of visible air pollutants of a shade or density equal to or darker than that designated as No. 1 on the Ringelmann chart or 20 percent opacity.

(ii) A person may discharge air pollutants into the at-mosphere from any source of emission for a period or periods aggregating not more than 5 minutes in any 60 minutes, provided that said air pollutants are of a shade or density not darker than No. 2 on the Ringel. 40 percent opacity.

(iii) Open burning conducted under provisions of section 19-508-17 shall not be subject to this subsection.

(a) (2) Visible emission restrictions for mobile sources.

(i) No person shall cause or permit the emission of visible air pollutants from gasoline-powered mobile sources for

longer than five (5) consecutive seconds.

- (ii) No person shall cause or permit the emission of clearly visible air pollutants (comparable to a shade or density equal to or darker than No. 1 on the Ringelmann chart or 20 percent opacity) from diesel powered motor vehicles for more than ten (10) consecutive seconds, during which time the maximum shade or density of emissions shall be no darker than No. 2 on the Ringelmann chart or 40 percent
- (a) (3) Exceptions for uncombined water. Where the presence of uncombined water, such as water vapor, is the only reason for the failure of an emission to meet the requirements of this regulation, then the provisions of this regulation shall not apply.

(a) (4) The following shall be exempt from the requirements of subsection (a) (2):

(i) Antique automobiles over 30 years old;

(ii) Vehicles used exclusively for racing; and

(iii) Mobile sources in the process of being repaired.

(a) (5) Emissions from stationary or idling mobile sources. No mobile source engine shall be allowed to operate for more than three (3) consecutive minutes when the mobile source is not in motion except as follows:

(i) When a mobile source is forced to remain motionless because of traffic conditions or mechanical difficulties over

which the operator has no control;

(ii) When it is necessary to operate heating, cooling or auxiliary equipment installed on the mobile source when such equipment is necessary to accomplish the intended use of the mobile source;

(iii) To bring the mobile source to the manufacturer's

recommended operating temperature;

(iv) When the outdoor temperature is below twenty(20) degrees Fahrenheit;

(v) When the mobile source is being repaired.

- (a) (6) Subsections (a) (2) and (a) (5) shall not apply to aircraft scomotives operating on rails, vessels for transportation on water, lawnmowers, snowblowers, and other small home appliances.
- (b) Fugitive dust. (b) (1) No person shall cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, con-structed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall be in accordance with good industrial practice as determined by the Commissioner and shall include, but not be limited to, the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures,

(ii) Application of asphalt, oil, water, suitable chemicals or coverage on materials stockpiles and other surfaces which can give rise to airborne dusts;

(iii) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during

sandblasting or other similar operations; (iv) Covering, at all times when in motion, open-bodied trucks and trains transporting materials likely to give rise

to airborne dusts;

- (v) The prompt removal of earth or other material from paved streets onto which earth or other material has been deposited by trucking or earth-moving equipment, erosion by water, or other means.
- (b) (2) Agricultural activities are exempt from the provisions of subsection (b) (1). However, agricultural practices such as tilling of land and application of fertilizers shall be conducted in such manner as to minimize dust from becoming airborne.
- (b) (3) No person shall cause or permit the discharge of visible emissions beyond the lot line of the property on which the emissions originate when:

(i) The emissions remain visible and exist near ground

level outside the property boundaries; or

- (ii) The emissions remain visible and impinge on a building or structure so that the health, safety, or enjoyment of life of the public may be diminished.
- (b) (4) No particulate matter shall be emitted into the open air in such a matter as to cause a nuisance

(c) Incineration. (c) (1) Definitions. The following terms as used in subsections (c) (1) to (c) (6) inclusive

shall have the following meanings:

(i) "Incinerator" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance, including but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap, or facilities for cremating human or animal remains. "Small incinerator" means an incinerator designed and used to burn waste materials of types 0, 1, 2, and 3 only, in all capacities not exceeding two thousand pounds per hour of waste material input. "Special incinerator" means an incinerator designed and used to burn pathological waste type 4 or trade waste types 5 and 6 of any burning capacity. Crematories are included in this category. "Large incinerator" means an incinerator owned or operated by any government or any person, firm or corporation, designed and used to burn waste materials generated by the public of any and all types, 0 to 6 inclusive, with a burning capacity in excess of two thousand pounds per hour of waste material input.

(ii) "New incinerator" means an incinerator which is a new source, as defined in section 19-508-1 (r).

(iii) "Existing incinerator" means any incinerator which

is not a new source, as defined in section 19-508-1 (r).

(iv) "Flue-fed incinerator" means an incinerator provided with a single flue which serves as both the charging chute and the flue to transport products of combustion to the atmosphere.

(v) "Liquid particulates" means particles which have volume but are not of rigid shape and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

(vi) "Solid particulates" means particles of rigid shape

and definite volume.

(vii) "Smoke" means and includes small gas-borne particles, excluding water vapor, arising from a process of combustion in sufficient number to be observable.

Sec. 19-508-18 Page 1 of 3

Excerpt from Cona SIP ipproved/1/1972

1 muy

(viii) "Air pollution control equipme vice which prevents or controls the emission of any air con-

(ix) "Type 0 waste" means trash, a mixture of highly combustible waste such as paper, cardboard, cartons, wood boxes and combustible floor sweepings, from commercial and industrial activities. The mixture may contain up to ten percent by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber seraps. This type of waste contains approximately ten percent moisture and five percent incombustible solids and has a heating value of approximately eighty-five hundred BTUs per pound as fired.

(x) "Type 1 waste" means rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings from domestic, commercial and industrial activities. The mixture may contain up to twenty percent by weight of restaurant or cafeteria waste, but contains little or no treated paper, plastic or rubber wastes. This type of waste contains approximately twenty-five percent moisture and ten percent incombustible solids and has a heating value of approximately sixty-five hundred BTU per pound as fired.

(xi) "Type 2 waste" means refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to fifty percent moisture and approximately seven percent incombustible solids, and has a heating value of approximately forty-three

hundred BTI per pound as fired.

(xii) "Type 3 waste" means garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to seventy percent moisture and up to five percent incombustible solids and has a heating value of approximately twenty-five hundred BTU per pound as fired.

(xiii) "Type 4 waste" means human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds and similar sources, consisting of up to eighty-five percent mois-ture and approximately five percent incombustible solids and having a heating value of approximately one thousand BTU per pound as fired.

(xiv) "Type 5 waste" means by-product waste, gaseous, liquid or semi-liquid, such as tar, paints, solvents, sludge,

fumes from industrial operations.

(xv) "Type 6 waste" means solid by-product waste, such as rubber, plastics, wood waste from industrial operations and all salvage operations.

(c) (2) Flue-fed incinerators. No person shall construct, install, use or cause to be used any new incinerator

of the flue-fed type.

(c) (3) (i) Emission standards. Particulates. No person shall construct, install, use or cause to be used any new incinerator which will result in particulate matter in the effluent in excess of 0.08 gr/S.C.F. (0.18 gm/NM³) corrected to 12 percent CO2, maximum 2-hour average. No person shall use or cause to be used any existing incinerator which will emit more than four-tenths pound of particulates per one thousand pounds of flue gases adjusted to fifty percent excess air.

(c) (3) (ii) All incinerators must comply with subsec-

tion (a) (1).

(c) (3) (iii) Unburned waste and ash. No person shall cause, suffer, allow or permit the emission of particulates of unburned waste or ash from any incinerator which are individually large enough to be discernible by the human eye.

(c) (3) (iv) Odors. No person shall construct, install. use or cause to be used any incinerator which will result in

violations of section 19-508-23.

and rated barning capacity or the posted at a convenient place as near as practical to the

point of operation. (ii) No person shall use or cause to be used any incinerator unless all components connected, or attached to, or serving the incinerator which affect air pollution are functioning properly and are in use, in accordance with the permit to construct and the certificate or permit to operate.

(c) (5) (i) Emission tests shall be conducted at the maximum-rated burning capacity of the incinerator.

(c) (5) (ii) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the Commissioner in accordance with good engineering practices. In cases of conflict, the determination made by the Commissioner shall govern.

(c) (5) (iii) For the purposes of this regulation, the total of the capacities of all furnaces within one system

shall be considered as the incinerator capacity.

(c) (6) Exceptions. The provisions of subsections (c) (1) to (c) (5) inclusive shall not apply to incinerators installed or used in dwellings containing six or fewer family

(c) (7) None of these regulations shall be construed to permit the emission of hazardous materials defined and

limited by the Commissioner.

(d) Fuel-burning equipment. (d) (1) No person shall cause or permit the emission from fuel-hurning equipment of particulate matter in excess of 0.20 pounds per million BTU (0.36 gm/10" gm-cal) of heat input for existing sources and 0.10 pounds per million BTU (0.18 gm/106 gmcal) of heat input for new sources.

(d) (2) For purposes of this section, the heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

(d) (3) Fuel-burning sources which, as of the effective date of these regulations, have particulate control equipment in place must maintain such control equipment in proper operation.

(e) Process industries - general. (e) (1) No person shall cause or permit the emission of particulate matter in any one hour from any source in excess of the amount shown in Table 3-1 below for the process weight rate allocated to such source, with the exception of sources specified in subsection (f).

TABLE 3-1

Process Weight Rate	Emission Rate	Process Weight Rate	Emission Rate
lbs_/hr.	lbs./hr.	lbs/hr.	lbs./hr.
100 500 1,000 5,000 10,000 20,000	0.36 0.55 1.53 2.25 6.34 9.73 14.99	60,000 80,000 120,000 160,000 200,000 400,000 1,000,000	29.60 31.19 33.28 34.85 36.11 40.35 46.72

(e) (2) Interpolation of the data in Table 3-1 for the process weight rates up to 60,000 lbs./hr. shall be accomplished by the use of the equation:

E = 3.59 Poss P equal to or less than 30 tons/hr. and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lbs/hr. shall be accomplished by the use of the equation:

E = 17.31 Po.16 P greater than 30 tons/hr. Where: E = Emissions in pounds per hour.

P = Process weight rate in tons per hour.

(e) (3) For the purposes of this regulation, process

weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. For a cyclical or batch operation, the process weight per hour will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour will be derived by dividing the process weight for a typical period of time by the length of that period of time.

(e) (4) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this regulation, the interpretation that results in the minimum value for allowable emission shall

apply.

(c) (5) For purposes of the regulation, the total process weight from all similar process units at a plant or premises shall be used for determining the maximum allowable emission of particulate matter that passes through a stack or stacks.

- (e) (6) For the purposes of this regulation, when any material undergoes a series of operations which are capable of emitting particulate matter and which employ any combination of machines, equipment, or other devices used for processing the material either continuously or in batches, the total process weight for the series of operations shall be the weight of materials introduced to the series as a whole. Any material which is the product of any operation in the series shall not be counted as part of the process weight for any other operation in the series.
- (f) Process industries specific. (f) (1) Emission standards (iron cupolas). No person shall cause or allow the operation of any iron foundry cupola unless such cupola is equipped with gas-eleaning devices and so operated as to remove eighty-five percent by weight of all particulate matter in the cupola discharge gases, or to release not more than eight-tenths of a pound of particulate matter per thousand pounds of discharge gas, whichever is more stringent. Gases, vapors and gas-entrained effluents from such cupolas shall be incincrated at a minimum temperature of 1300 degrees Fahrenheit for a period of not less than three-tenths of a second.
- (f) (2) Emission standards (hot mix asphalt plants). No person shall cause or allow the emission of particulate matter from hot mix asphalt plants in excess of three-tenths of a pound per one thousand pounds of discharge gas. In addition, the process must conform to subsection (b) of this regulation.
- (f) (3) Emission standards (foundry sand). No person shall cause or allow the operation of a foundry sand process unless such process conforms to subsection (b) of this regulation and is equipped with fugitive dust control facilities with collection efficiency of at least 90 percent.
- (f) (4, Emission standards (concrete batching). No person shall cause or allow the operation of a concrete batching process unless such process conforms to subsection (b) of this regulation and is equipped with fugitive dust control facilities with a collection efficiency of 90 percent or 0.02 pounds per cubic yard of concrete, whichever results in less emission.

. 19-508-19. Control of sulfur compound emissions

(a) Fuel combustion. (a) (1) Definitions. As used in absections (a) through (f) inclusive: (i) "Fuel" means aubstance containing combustibles used for producing at, light, power, or energy; (ii) "combustible" means the at-producing constituents of a fuel; (iii) "combustion" eans the rapid chemical combination of oxygen with the mbustible element of a fuel resulting in the production heat; (iv) "sulfur dioxide (SO₂)" means a colorless gas standard conditions which has the molecular formula O_z ; (v) "sulfur oxides (SO_x)" means any compound made only of sulfur and oxygen. For the purpose of this gulation, concentrations of sulfur oxides (SO_x) will be leulated as sulfur dioxide (So₂); (vi) "stack" or "chimmeans a flue, conduit or opening permitting parculate or gaseous emission into the open air, or conructed or arranged for such purpose; (vii) "fuel meransfers, or provides in retail or wholesale trade, fuel, eluding agents, brokers, wholesalers, distributors, or roducers who sell commercial or noncommercial fuel; mmercial or noncommercial fuel for the purpose of eating by combustion heat, light, power, or energy.

(a) (2) (i) No fuel merchant, except as provided in bsections (a) (3) and (a) (4), shall store, offer for sale, il, make available, deliver for use or exchange in trade r use in Connecticut, and no porson shall use or burn el which contains sulfur in excess of one percent (1.0%) weight (Dry Basis). After September 1, 1972, no fuel erchant shall store, offer for sale, sell, make available, eliver for use or exchange in trade for use in Connecticut el which contains sulfur in excess of one-half of one ercent (0.5%) by weight (Dry Basis), and after April 1973, no person shall use or burn fuel which contains lfur in excess of one-half of one percent (0.5%) by eight (Dry Basis).

(ii) Under conditions of fuel shortage emergency, as dermined by the Commissioner, higher percentages of sulfur ay be permitted by express approval of the Commissioner r temporary periods.

(a) (3) Notwithstanding the provisions of subsection) (2), the Commissioner may approve: (i) combustion a mixture of fuels, or (ii) combustion of a single fuel, hich contain(s) a higher sulfur content than that specified subsection (a) (2), if the combustion of such fuel is mbined with a stack-gas cleaning process or its equivalent approved in writing by the Commissioner. ick-gas cleaning process, or its equivalent, shall be apoved unless the total sulfur compound emissions (exressed as sulfur dioxide) from the stack, chimney, flue, and other vents to the ambient air do not exceed 0.55 bunds per million BTU gross heat input, provided that y effluent from the approved stack-gas cleaning process its equivalent which is discharged into state waters ets with the prior approval of the Commissioner. The ommissioner may require such information or data as is cessary to establish that total emissions will not exceed e above limitations.

(a) (4) In other than conditions of fuel shortage emerney described under subsection (a) (2) (ii), fuel merants seeking to store, offer for sale, sell, deliver for use or change in trade, for use in Connecticut, and fuel users cking to create by combustion heat, light, power, or ergy from fuels containing sulfur in excess of the maxiums set by subsection (a) (2) under the conditions ecified in subsection (a) (3) shall obtain the prior apoval of the Commissioner.

(a) (5) The provisions of subsection (a) (1) through (a) (7) inclusive shall not apply to fuels used by oceangoing vessels

(a) (6) The Commissioner may require submission of fuel analyses or results of stack sampling, or both, prepared at the expense of the merchant or user, to ensure compliance with the provisions of subsections (a) (1) through (a) (7) inclusive, and no person shall fail to submit such data when requested to do so by the Commissioner.

(a) (7) Persons selling fuels in Connecticut shall maintain records of sales of all fuel containing sulfur and shall make these records available for inspection by the Commissioner or his representative during normal business hours This section shall not apply to any of the following fuels which have sulfur contents below two-tenths of one percent (0.2%) by weight (Dry Basis): distillate oil, motor vehicle

fuel, aircraft fuel, or gaseous fuel.

(a) (8) No person shall cause or permit the flaring or combustion of any refinery process gas stream or any other process gas stream that contains sulfur compounds measured as hydrogen sulfide in concentrations greater than 10 grains per 100 standard cubic feet (23 gm/100 scm)

(b) Sulfuric acid plants. No person shall cause or permit sulfur oxides emissions which exceed 6.5 pounds per ton (3.25 kg/metric ton) of 100 percent acid produced.

- (c) Sulfur recovery plants. No person shall cause or permit the emission of sulfur oxides from a sulfur recovery plant to exceed 0.01 pounds (kg.) per pound (kg.) of sulfur processed.
- (d) Nonferrous smelters. No person shall cause or permit the emission of sulfur oxides from primary nonferrous smelters to exceed that set forth according to the following equations.

Copper smelters: Y = 0.2 X. $Y = 0.564 X^{0.65}$ $Y = 0.98 X^{0.77}$ Zinc smelters: Lead smelters:

Where X is the total sulfur fed to the smelter in lb./hr. and Y is the allowable sulfur dioxide emissions in lb./hr.

- (e) Sulfit pulp mills. No person shall cause or permit the total sulfite pulp mill emissions of sulfur oxides from blow pits, washer vents, storage tanks, digester relief, recovery system, etc., to exceed 9.0 pounds per air-dried ton (4.5 kg./metric ton) of pulp produced.
- (f) Other process sources. Notwithstanding the provisions of section 19-508-18 (e), process sources not covered in subsections (b) through (e) inclusive shall not emit sulfur oxides in the effluent in concentrations which exceed 500 parts per million.



DAVID A. LUDDER

1 Buxton Lane
Riverside, Connecticut 06878

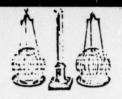
June 26, 1974

r. John A.S. McGlennon, Administrator
.S. Environmental Protection Agency - Region I
com 2203
ohn F. Kennedy Building
oston, Massachusetts 02203

Dear Mr. McGlennon:

This communication shall also serve as notice to all parties receiving same that a civil action will be commenced against the Connecticut Transportation Authority and the Penn Central Transportation Company at the expiration of sixty days as provided in Section 304 (b)(1) of Title III of the Clean Air Act should no Federal compliance schedule or order be in effect at that time. [The preceeding is excerpted from the enclosed letter]

Sincerely, David a. hadh David A. Ludder



DAVID A. LUDDER 1 Buxton Lane Riverside, Connecticut 06878

June 26, 1974

Ir. Russell E. Train, Administrator J.S. Environmental Protection Agency Vaterside Mall 4th & M Streets, S.W. Vashington, D.C. 20460

Dear Mr. Train:

In accordance with the provisions of Section 113 (a) of Title I of the Clean Air Act as amended, 42 U.S.C. Section 1857 c-8 (a), I hereby inform you, as Administrator of the United States Environmental Protection Agency, of violations of regulations adopted pursuant to the Connecticut Air Implementation Plan by the Penn Central Transportation Company (hereinafter, Penn Central) power plant in Cos Cob, Connecticut.

The twenty-seven megawatt power plant has for better than sixty-five years burned coal to generate twenty-five cycle electricity to power commuter trains to and from New York City. It has for half that time been the subject of countless recorded public complaints.

On June 30, 1969, the Public Utilities Commission (hereinafter, P.U.C.) of the State of Connecticut ordered the Penn Central to eliminate the "pollutant emissions from the stacks of the Cos Cob power plant," by selecting and implementing one of three remedial plans. These were (1) repair the plant, (2) close the plant, or (3) fuel conversion.

In its decision to issue the Order, the P.U.C. found the deleterious pollution emitting from the stacks of the Cos Cob plant, injuring the health, safety and property of the people of Greenwich, a nuisance and unacceptable. The decision further stipulated:

> "The continuation of commuter service to and from New York by use of electric power produced by the Cos Cob plant cannot

> > ONLY COPY AVAILABLE

be acceptable as a superior or paramount factor or as a fair exchange consideration for sufferance of the pollution by residents of Greenwich.

"[Furthermore, in failing to abate the emmissions], the company is in contempt of the law of the State of Connecticut, the public interest and, in particular, the basic decent entitlements of the residents of Greenwich.

The Connecticut Transportation Authority (hereinafter, F.A.) subsequently provided \$160,000 for repairs but the llution remained. The P.U.C. did not take further action d consequently regarded its Order as still outstanding.

In 1969, the State Legislature passed the Connecticutw York Railroad Passenger Transportation Compact (see ction 16-343 et seq. of the Connecticut General Statutes) continue commuter operations of the now bankrupt Penn ntral railroad. Section 16-344 of the General Statutes ovides a special exclusion of "compact" activities from ate regulation, the text of which follows:

Exemption from State Regulation:

Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation Authority shall be exempt from State regulation.

e Penn Central power plant has since January 1, 1971, en operated by the C.T.A. which is responsible for its intenance and repair as provided in Section 402 of its ase agreement entered into October 27, 1970.

On July 7, 1972 and again on July 25, the Director of the r Compliance Unit of the Connecticut Department of Environmental Protection (hereinafter, D.E.P.), Mr. Eckardt C. Beck, sued a Notice of Violation against Mr. C.H. Swanson, Chief agineer of the Cos Cob power plant. Both notices indicated hat a failure to comply with the Department's visible emistons regulation would require the Department to issue an rder demanding compliance. Compliance was not forthcoming, iolations continued, and no Order was issued.

The Town of Greenwich brought suit against the C.T.A. In the Penn Central in the Supreme Court of the State of Innecticut, for failure to observe State air pollution gulations. In its decision, rendered March 1974, the Court held the defendent's claim to exemption from such regulations provided in Section 16-344.

Plans to convert the plant to propane gas or oil have en considered and abandoned for lack of adequate supplies. e D.E.P. recommended the installation of wet scrubbers as cently as July and August 1973. This proposal, however, s rejected by Governor Thomas Meskill at a public appearace in Stamford on December 12, 1973, as uneconomical.

The phase-out schedule so often referred to in the levent documents describes the Connecticut Department of ansportation's plan to convert the railroad from twenty-we to sixty cycle power to be provided by the Connecticut that and Power Company. This conversion will render the wer plant obsolete and useless. It is, therefor, a misatement to term the phase-out schedule a compliance schedule opted by the D.E.P., although both departments announced a plan in a "joint statement." In addition, this is the ird phase-out date announced in recent years and there is assurance that December 1975 will be the final one.

The D.E.P. has failed to halt the continuing (despite e recent investment of more than \$500,000 in tax monies r boiler repairs and improvements) violations primarily cause (1) of the interpretation of the special exemption w; (2) of the rumored "hands off" instructions of the vernor; and (3) plant operations are the responsibility a sister agency, the C.T.A.

The United States Environmental Protection Agency wever, is not bound by State statutes. A violation of a gulation adopted pursuant to a state implementation plan also a violation of Federal law.

I implore you to intervene in this unusual circumstance reduce or eliminate emissions by means of a Federally posed and enforced compliance schedule or Order pursuant Section 113 of Title I. Greenwich residents cannot tolerate rther delays in the plant's proposed abandonement.

I impatiently await your concurrence with my findings d subsequent remedial action. Furthermore, this communicaton shall also serve as notice to all parties receiving

me that a civil action will be commenced against the nnecticut Transportation Authority and the Penn Central ansportation Company at the expiration of sixty days as ovided in Section 304 (b)(1) of Title III of the Clean r Act should no Federal compliance schedule or Order be effect at that time.

Sincerely, David G. Ladde David A. Ludder

- ransportation Authority, Department of Transportation of the State of Connecticut, et al.

 March 1974.
 - 2. Notice(s) of Violation
 - 3. Photograph(s)

c: Mr. John A.S. McGlennon, Administrator, U.S.E.P.A.-Region I Governor Thomas J. Meskill, State of Connecticut Mr. A. Earl Wood, Commissioner, Dept. of Transportation Mr. Henry M. Beal, Act. Dir., Air Compliance Unit, D.E.P. Mr. John D. Kernan, Penn Central Transportation Company Mr. James Weldon, Chief Engineer, Cos Cob power plant



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

June 28, 1974

Joseph B. Burns
Commissioner of Transportation
Department of Transportation
24 Walker Hill Road
Wethersfield, Connecticut

RE: Cos Cob Generating Station

Dear Commissioner Burns:

The rationale of \$16-344 of the Connecticut General Statutes and of the holding in the recent case of Greenwich v Connecticut Transportation Authority, reported on page 7 of the Connecticut Law Journal of May 7, 1974, would appear to exempt the above facility from state air and water pollution regulation. To the extent that the facility is exempt from such state regulation, it is the responsibility of this Agency to control air and water pollution from the facility pursuant to the federal Clean Air Act and the Federal Water Pollution Control Act. Thus it may be necessary for this Agency to promulgate and enforce regulations regarding air emissions from the facility pursuant to the Clean Air Act and to issue an NPDES permit controlling its water discharge pursuant to the Federal Water Pollution Control Act.

Even if the facility were not exempted from state air pollution regulations we are concerned that the facility may not be in compliance with state air pollution regulations (Department of Environmental Protection Regulation Sections 19-508-18(a) and (d) and -19), which are part of a federally approved state implementation plan under the federal Clean Air Act and enforceable by this Agency under section 113 of that Act. To determine what, if any, action this Agency may be required to take regarding air emissions from that facility, we request the following information:

 Visible emission (Ringelmann) readings from the facility which your Department has or to which it has access;

- Information which the Department has or to which
 it has access regarding the emission of particulate
 matter from the facility in terms of pounds per
 million BTU of heat input;
- The sulfur content of the fuel which the facility
 is burning and proposes to burn, in terms of
 percentage by weight (Dry Basis);
- 4. Air pollution control equipment in use or planned for the facility; and
- 5. Shut down schedule, if any, for the facility.

We request that such information be forwarded to us within thirty days, after which we believe it would be appropriate to schedule a meeting with you or your representative to emplore what, if any, action this Agency should take regarding the above matters. Alternatively, you may prefer an earlier meeting at which such information would be presented and such action would be discussed. If so, please contact Michael R. Deland, Chief of our Enforcement Branch, at 617-223-4568 or myself at 617-223-3478. We are, of course, available to answer any questions which you may have in this regard in the meantime. Thank you for your attention to this matter.

Very truly yours,

Jeffrey G. Miller
Director
Enforcement Division

cc: Douglas M. Costle, Commissioner Connecticut Department of Environmental Protection

bcc: J. A. S. McGlennon

C. V. Smith

E. J. Conley

M. R. Deland

T. W. Devine

L. M. Goldman

UNITED S... FES ENVIRONMENTAL PROTECTIO. AGENCY

ECT: Cos Cob Power Station

DATE: August 2, 1974

Lawrence M. Goldman

Jeffrey G. Miller, Director Enforcement Division

Michael R. Deland, Chief Enforcement Division 1 M/15

On July 30, 1974 I visited the Cos Cob Power Station with John Gastler, Connecticut Department of Transportation. At the station, we met with William Russell, Railway Consultant, Cos Cob Power Station and James Weldom, Chief Plant Engineer, Cos Cob Power Station. The following summaries my findings:

- (1) Cos Cob operates three boilers designated 902, 903, and 904. Units 902 and 903 vent to a common stack, while 904 vents to a separate stack. 902 and 903 were installed in the mid-1930's and 904 in 1945.
- (2) The present capacity in pounds of steam per hour for units 902, 903, and 904 is 125,000,125,000 and 150,000, respectively. This corresponds to a rated input capacity of 120 million BTU's per hour for units 902, and 903 and 145 million BTU's per hour for unit 904. These values should be used to compute the allowable emission limitation for fuel burning equipment as specified in the DEP regulation 19-508-18(d) which limits emissions to 0.2 pounds of particulates for million BTU. It is my opinion that the units can not meet this requirement as presently operated and controlled.
- (3) In reviewing the fuel usage records:

	Estimated Range	Most Recent Data (7/3/74 to 7/9/74)
Percent Sulfur	0.8 to 1.7	1.75
Percent Ash	10 to 17	10.2
Percent Volitales	25	. 25
Percent Moisture	1 to 4	1.4

The heating value of the coal ranges from 11,000 to 13,500 BTU per pound. Annual usage (1973) 101,450,000 pounds of coal.

Form 1320-6 (Rev. 6-72)

- (4) The emissions from Units 902, 903, 904 are presently vented to a mechanical collector (cyclone) followed by an electrostatic precipitator (ESP). The ESP's were installed in the early to mid-1950's and have been recently overhauled by replacing the wiring and plates. According to Cos Cob data the ESP operates with one field at a field operating voltage of 70 to 100 KV and current of 20 MA. The exit gas temperature is 450°F and each fan is designed to pull 86,000 CFM at 412°F. Stack test data to determine collection efficiency is not available. Based upon the above data and my observations, the control equipment cannot meet the applicable Connecticut DEP emission limitations without upgrading and most likely replacing the existing control system.
- (5) Smoke monitoring instrumentation has recently been installed on Unit 902 (Leeds-Northrup Model No. 6597) and similar monitors are on order for units 903 and 904. During the plant inspection, it was noted that the monitor had been shut off. Once operational, it was my opinion that the monitor was performing satisfactorily, however, Mr. Russell and the others felt it was reading too high (readings ranged from 30 to 60% opacity).

Furthermore, I concluded that the units cannot meet the visible emission criteria, DEP regulation 19-508-18(a) which limits visible emissions to 20% opacity except for 5 minutes in any 60 minute period not to exceed 40% opacity. Based upon my observations the normal opacity range is 40 to 60%. With the control system shut off the opacity was 100% (totally black smoke). Therefore, the ESP's are working satisfactorily in the large particle range (greater than 10 microns). With the control system on the effluent (plume) becomes opaque indicating poor collection efficiency in the lower particle size range (0.1 to 5.0 microns). Typically particles in this range produce a maximum scattering of light, resulting in an opaque plume.

(6) The Cos Cob Power Station employes approximately 74 and operates three shifts per day, 7 days a week. They burn pulverized coal which is pulverized on site with a wet bottom fily ash disposal system and no fly ash reinjection. Based on AP-42 emission factors the uncontrolled emission range is 170 to 290 pounds of particulate per ton of coal burned depending upon the ash content. As mentioned above, the collection efficiency of the ESP is unknown, therefore, the controlled emission rate cannot be calculated.

(7) The Cos Cob fuel records show that the station is also in violation of the DEP sulfur limitation of 0.5% sulfur.

In conclusion, Cos Cob is planning to shut down the existing power station by December, 19:5 and construct a sub-station at the existing site. Connecticut Power and Light (CP&L) will provide 60 cycle power and all existing 25 cycle cars will be phased out or replaced with new 60 cycle cars. I recommend the following actions:

- (1) schedule a meeting with the Connecticut Department of Transportation and Cos Cob personnel to discuss the power stations conversion and proposed timetables to implement these plans. Also, outline EPA's regulatory responsibilities and alternatives;
- (2) draft a regulation incorporating the Cos Cob Power Station into the Connecticut Implementation Plan; and
- (3) issue an Administrative Order to Cos Cob requiring shut down of the facility by December, 1975 or the installation of emission control equipment within a reasonable time frame.

Lawrence M. Goldman

Technical Operations Section

Enforcement Division

1m/16

August 5, 1974

Earl M. Uram, ScD., Chairman Connecticut Air Conservation Committee 45 Ash Street East Hartford, Connecticut 06108

Dear Dr. Uram:

I apologize for this late reply to your letter to Mr. McGlennon regarding the Cos Cob Generating Station.

The Agency is aware of the air pollution problems associated with the station. Only last week one of our engineers inspected the facility to determine in what manner it is in violation of existing regulations and what, if any, short term improvements could be accomplished. I have been in extensive contact with Connecticut Transportation Authority ("CTA") officials during the past several weeks to determine the appropriateness of long term solutions, including shut down.

I have also reviewed the state Supreme Court decision to which you referred. That decision held that the CTA was not subject to state air pollution regulations because of an exemption contained in the CTA's enabling legislation, passed before those regulations were submitted to approval by EPA as a state implementation plan under the federal Clean Air Act. Since the state implementation plan approved by EPA and thus becoming federally enforceable, excluded coverage of the facility in question as a matter of state law, it is my reading of the federal Act that the facility is not presently covered by federally enforceable regulations. Had the Agency been aware of this exemption when the state implementation plan was submitted for approval, it would have disapproved the plan insofar as it did not cover CTA facilities and promulgated regulations to cover those facilities. Although the late discovery of that exemption presents timing problems in view of the May, 1975 attainment date for compliance with implementation plans, I see no alternative but to proceed with such disapproval and promulgation at this time. Accordingly, mericers of my staff and of our Air Branch are drafting appropriate notices for publication in the Federal Register.

	CONCURRENCES		
IPE Jan			
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RM 132041

These notices will include a proposed federal regulation covering all CTA facilities and will announce a time and place of a hearing on that proposal. I will see that you are placed on the mailing list for that notice. We will appreciate your comments at that hearing.

In the absence of a presently enforceable federal regulation covering the facility in question, we cannot take the enforcement action you suggest. It is our intention, however, to immediately proceed with appropriate action upon the promulgation of a federal regulation covering the facility.

If I can be of further as istance in this regard, please do not hesitate to contact me at 617-223-3478.

Very truly yours,

Jeffrey G. Miller Director Enforcement Division

JGM: mhg

& U.S. GOVERNMENT P-NG OFFICE: 1972 - 722 - 92	20
HER, CT ACC	TROL NO.
Power Plant 6/26/74	7/1/74
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(2) Mr. Aland (3)	. (4)
4	DATE RELEASED
1. is handling cos- cob cose.	ACKNOWLEDGED - DATE
is handling cas-cob case.	NO ANSWER NEEDED
(6.72)	(Explain in remarks)

(Remove this copy only, do not separate remainder.)

ONLY COPY AVAILABLE

Connecticut Air Conservation Committee

45 ASH STREET, EAST HARTFORD, CONNECTICUT 06108 • PHONE 52S-9437

A Section of The Connecticut Lung Association

EARL M URAM, Se D Chairman JAMES A. SWOMLEY
Executive Director

June 26, 1974

COUNCIL ENOIT, Ph.D. John A. S. McGlennon, Administrator Region I Environmental Protection Agency 2203 John F. Kennedy Building Boston, Massachusetts 02203

OWERS, JR., M.D.

Dear Mr. McGlennon:

. GILLETTE

DEPAOLO

DDAR, M.D. Ex Officio) RETEN

EL HOWE

EL, M.D.

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PRINGLE, Ph.D.

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I am sure that you are aware of the recent Connecticut Supreme Court decision concerning the Cos Cob power plant located in the Town of Greenwich. The court ruled that the plant, according to the General Statutes, is exempt from state regulations, including the air regulations.

The plant, which is currently burning coal, has been for many years a constant source of pollution in the area. The problem was supposed to have been taken care of by now, but has not been. Plans call for an electrical substation to be built on the property and for power to be drawn from the Connecticut Light and Power Company. According to a Connecticut Department of Transportation official, this process should be accomplished by the end of 1975 or early 1975. However, the plant is still violating air regulations and when one looks at the past performance of the state agencies involved, one cannot feel assured that the plant will be taken care of as now scheduled.

Although the state air regulations cannot be enforced, these very same regulations were adopted by the Federal Government and are, therefore, Federal law. Consequently, the Cos Cob power plant is in violation of Federal standards and is subject to their enforcement. However, I am not aware of any action having been taken by your agency. I would appreciate learning the reasons behind your apparent inaction and whether or not you plan to become involved in this issue.

Our organization is very concerned about the health aspects of this situation as well as the enforcement issue involved. The regulations were drawn up to protect the public's health and their enforcement is necessary in order to do so.

June 26, 1974 A. S. McGlennon We will be keeping in touch with the Town of Greenwich to see it any further action they might be taking. We will also be ting your reply concerning any action in which your agency might me involved. Thank you for your attention to this problem. Earl M. Uram, Sc.D. Chairman

arg

Laura Morrison, Greenwich Health Dept. Commissioner Douglas Costle, DEP Commissioner Joseph Burns, DOT

8/15/20

Mr. David A. Ludder 1 Buxton Lane 06878 Riverside. Conn.

Dear Mr. Ludder:

This letter will confirm the August 6 telephone conversation between yourself and Nancy H. Accola of my staff concerning the Cos Cob Generating Station and will respond to the points raised in your letter to the Administrator of EPA regarding the same matter, dated June 26, 1974.

The Agency is aware of and concerned about the air pollution problems associated with the station. On July 30 one of our engineers inspected the facility to determine in what manner it is in violation of existing regulations and what, if any, short term improvements could be accomplished. I have been in extensive contact with Connecticut Transportation Authority ("CTA") officials during the past several weeks to determine the appropriateness of long term solutions, including shutdown.

The state Supreme Court decision in Town of Greenwich v. Connecticut Transportation Authority removed the basis for enforcement action against the facility by this Agency, or by a private citizen under Section 304(a)(1) of the Clean Air Act. That decision held that the CTA is not subject to state air pollution regulations because of an exemption contained in the CTA/s enabling legislation, passed before those regulations were submitted for approval by EPA as part of a state implementation plan under the federal Clean Air Act. Since the state implementation plan approved by EPA, and thus federally enforceable, excluded coverage of the facility in question as a matter of state law, it is my reading of the federal Act that the facility is not presently covered by federally enforceable regulations. Had the Agency been aware of this exemption when the state implementation plan was submitted for approval, it would have disapproved the plan insofar as it did not cover CTA facilities and promulgated regulations to cover those facilities. I see no alternative but to proceed with such disapproval and promulgation at this time. Accordingly, members of my staff and of our Air Branch are drafting appropriate notices for publication in the Federal Register.

. drarezuk, appropro	CONCURRENCES	
NIAE IAE		
MHA. 18-		•
8/14/74 8/14/74		
RM 1320-	OFFI	CIAL FILE COPY

These notices will include a proposed federal regulation covering all CTA facilities and will announce a time and place of a hearing on that proposal. Copies of the proposed notices will be sent to you for your early review at the time they are forwarded to our Washington office for approval.

Upon the promulgation of a federally enforceable regulation covering the facility it is our intention to immediately proceed with appropriate action. I trust you will agree that it would not be in the interest of the environment to shut the facility down at this time and thus cut off commuter rail service. Such action would severely disrupt the Transportation Control Plan of Metropolitan New York City. Instead since the CTA is taking the necessary preliminary steps to allow the Penn Central Railroad to be powered by Connecticut Light and Power Co., the Agency will issue a federal order, under Section 113 of the Clean Air Act, requiring the phaseout of the facility by December of 1975. Non-compliance with the order would subject the CTA to civil and criminal penalties under Section 113(b) and (c) of the Act.

I hope this has been helpful in explaining how the Agency must proceed in order to issue a federal order in this case. If you have any further comments of questions please do not hesitate to contact either me at 617-223-3478 or Nancy H. Accola, an attorney in our Enforcement Division, at 617-223-5600.

Very truly yours,

Jeffrey G. Miller
Director
Enforcement Division

cc: Richard D. Wilson, Director
Division of Stationary Source Enforcement

JGM/NHA:mrv

ENVIRONMENTAL PROTECTION AGENCY

7/23/7C.

Mr. Jean J. Schueneman, Director Control Programs Development Division Environmental Protection Agency Research Triangle Park Durham, N.C. 27711

Dear Mr. Schueneman:

Enclosed is a proposed rulemaking notice and an accompanying action memorandum. Your assistance in expediting this matter will be greatly appreciated.

Sincerely yours,

John A.S. McGlennon Regional Administrator

JASM/NHA: mrv

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ENVIRONMENTAL PROTECTION AGEN'Y

KEULUM L

Notice of proposed rulemaking for the State of Connecticut - ACTION MEMORANDUM

John A.S. McGlennon, Regional Administrator

The Administrator

ISSUE

Should the Administrator publish notice of proposed rulemaking to promulgate regulations applicable to certain facilities owned, operated or under contract with the Connecticut Transportation Authority which are exempt from the requirements of the State's Implementation Plan, for the purpose of requiring such facilities to comply with the State's Implementation Plan?

DISCUSSION

On May 31, 1972, pursuant to Section 110 of the Clean Air Act, the Administrator approved a Plan implementing National Ambient Air Quality Standards for the State of Connecticut. The Administrator's approval of the required legal authority as specified in 40 CFR 51.11 was based on the assumption that the Plan did in fact cover all State facilities as it purported to. Subsequently, the Connecticut Supreme Court in Town of Greenwich v. Connectic + Transportation Authority et al. (Connecticut Law Journal, May 7, 1974, at 7) held that Connecticut Transportation Authority facilities were exempt from all state regulation including state air pollution regulations. (Tab A) The Court based its opinion on language in the statute creating the Authority which reads, "Mass transportation and railroad service operated pursuant to this compact or under contract with the Connecticut Transportation Authority shall be exempt from state regulation" (Connecticut General Statutes Section 16-344). That statute was enacted in 1969, before the Connecticut Implementation Plan was submitted to EPA.

Therefore, at the present time Connecticut does not have the legal authority required by the Clean Air Act and EPA regulations to control a group of sources, including the Cos Cob Generating Station which supplies the power for the Penn Central Railroad, in accordance with its Implementation Plan. The State has been unsuccessful in obtaining the necessary corrective legislation to require these facilities to comply with Implementation Plan requirements.

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ALTERNATIVES

Option A:

Promulgate Connecticut Regulations for the Abatement of Air Pollution Sections 19-508-1 through 19-508-25 inclusive, as amended, to apply to facilities owned, operated or under contract with the Connecticut Transportation Authority.

pro:

- 1. The Regulation is consistent with the requirements of the Clean Air Act and 40 CFR 51.11.
- 2. EPA would then have the requisite authority which it does not presently have to require compliance with Connecticut Regulations for the Abatement of Air Pollution from facilities owned, operated or under contract with the Connecticut Transportation Authority.

con:

None

Option B:

Do not promulgate Connecticut Regulations for the Abatement of Air Pollution Sections 19-508-1 through 19-508-25 inclusive, as amended, to apply to facilities owned, operated or under contract with the Connecticut Transportation Authority.

pro:

None

con:

1. No justification as the Clean Air Act, as amended, and 40 CFR 51.11 require that the States have the requisite legal authority to enforce the Act against all sources which prevent attainment or maintenance of national standards.

RECOMMENDATION

That EPA propose regulations to require that facilities owned, operated or under contract with the Connecticut Transportation Authority comply with State Implementation Plan requirements.

· DISPOSITION

A Federal Register notice of proposed rulemaking has been prepared which proposes all of the federally approved Connecticut Implementation Plan regulations for promulgation as an EPA Plan with respect to facilities owned, operated or under contract with the Connecticut Transportation Authority. Included is notice of a public hearing on the proposed rulemaking. (Tab B)

Approve:	-
Disapprove: _	_
Date:	

CONCURRENCES

AG,	Kirk	Concur	Nonconcur See Tab	Date
AF,	Strelow	Concur	Nonconcur See Tab	Date

Prepared by : 1AE:NHAccola:9/11/74:617/223-5600

ENCLOSURES

Tab A - Town of Greenwich v. Connecticut Transportation Authority et al.

Tab B - Federal Register notice of proposed rulemaking and public hearing.

cc: A. Kirk, AG

R. Strelow, AF

R. Wilson, AGGS

P. Alberico, AGGS

N. Edmisten, AFSC

R. Mullins

C. Thompson

JASM/NHA:mrv

Environmental Protection Agency

[40 CFR Part 52]

Approval and Promulgation of State Implementation Plans
Connecticut

Notice of Proposed Rulemaking: Proposed Regulations for the Control of Air Pollution from Facilities Owned, Operated or under Contract with the Connecticut Transportation Authority

On May 31, 1972 (37 FR 10842), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator initially approved the State Plan for implementation of the National Ambient Air Quality Standards in the State of Connecticut. The Administrator's approval of the Legal Authority section of that Plan was based on the assumption that the State had the legal authority required by 40 CFR § 51.11, including authority to prevent construction, modification or operation of any stationary source where emissions from such source will prevent the attainment or maintenance of a national standard.

Subsequently, the Connecticut Supreme Court ruled in Town of Greenwich

v. Connecticut Transportation Authority et al., (Connecticut Law Journal,

May 7, 1974, at 7) that Connecticut General Statutes Section 16-344 exempts

facilities owned, operated or under contract with the Connecticut Trans
portation Authority from the State Implementation Plan. Therefore, under

the present state of the law in Connecticut, the State does not have the

legal authority required by the Clean Air Act and EPA regulations to control

a group of facilities controlled by the State in accordance with the State's

Implementation Plan. Insofar as such facilities are exempt from the

CONCURRENCES

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RM 132041

40

Connecticut Implementation Plan, the Plan does not meet the requirements of 40 CFR 51.11(a) and is, under authority of Section 110 of the Act, hereby disapproved to that extent.

Section 110(c)(2) of the Clean Air Act directs the Administrator to publish proposed regulations to be substituted for any portion of a plan submitted by a state which he determines not to be in accordance with the requirements of Section 110 of the Act, which regulations shall become a part of the state implementation plan. The Administrator hereby proposes to promulgate regulations applicable to all Connecticut Transportation Authority facilities, which regulations are identical to Connecticut Regulations for the Abatement of Air Pollution Sections 19-508-1 through 19-508-25 inclusive.

Copies of the regulations which are being proposed are available for public inspection during normal business hours at the Office of Public Affairs, EPA, Room 2203, John F. Kennedy Building, Boston, Massachusetts 02203 and at the Air Compliance Unit, Connecticut Department of Environmental Protection, State Office Building, Hartford, Connecticut 06115.

Notice is hereby given of a public hearing concerning the proposed regulation to be held on at

The hearing will be conducted informally. Technical rules of evidence will not apply. Interested persons wishing to make a statement at the hearing will be afforded the opportunity to do so. The time for making a statement will be limited. Such persons are requested to file a notice of their intention to make a statement no later than fifteen days prior to the hearing and, if practicable, to submit five copies of the

Protection Agency, Region I, JFK Building, Boston, Mass. 02203.

Authority: Section 110(c) of the Clean Air Act, as amended, 42 U.S.C. § 1857c-5(c).

Date:	

-Russell-E:-Train, Administrator Environmental Protection Agency Subpart H 10 amended by adding 5 52.376 as follows:

8 52.37 Legal Authority

The requirements of § 51.11(a) of this chapter are not met because the State does not have the legal authority to enforce approved implementation plan regulations against facilities owned, operated, or under contract with the Connecticut Transporation Authority.

Subpart H is amended by adding \$ 52.377 as follows:

8 52.3 Rules and Regulations

Connecticut Regulations for the Abatement of Air Pollution Section

19-508-1 through 19-508-25 inclusive, as originally approved by the

Administrator in 40 CFR s 52.373 and subsequently revised, shall apply in

all respects to facilities owned, operated or under contract with the

Connecticut Transportation Authority.

Sept. 26174



STATE OF CONNECTICUT

PUBLIC UTILITIES COMMISSION

STATE OFFICE BUILDING . HARTFORD, CONNECTICUT 06115

49

DOCKET NO. 10771

COMPLAINT BY THE TOWN OF GREENWICH AND THE RIVERSIDE ASSOCIATION CONCERNING POLLUTION FROM THE COS COB POWER PLANT OF THE PENN CENTRAL COMPANY IN THE TOWN OF GREENWICH

FINDING AND ORDER

The Town of Greenwich, the Riverside Association, a voluntary association of citizens in the Riverside area of Greenwich, and many petitioners, joined in complaining to this Commission that pollutants issue from the Cos Cob power plant of The Penn Central Company located in the Town of Greenwich.

After due notice a public hearing was held on this matter on April 15, 1969 at the Town Hall in Greenwich and continued on April 16 at the Commission offices in Hartford.

All parties appeared by counsel. Many residents of the Town of Greenwich with counsel participated in the hearing. Many petitions were filed. Representatives of the State Health Department and The Connecticut Commission on Pollution Control also participated.

JURISDICTION OF PUBLIC UTILITIES COMMISSION CHALLENGED

Counsel for the Penn Central Company questioned the jurisdiction of this Commission to proceed to a hearing on this case and the taking of evidence, on the ground that matters of health and pollution resided exclusively in the Air Pollution Control Commission of the State of Connecticut. His motion, after being duly heard, was dismissed and the Commission proceeded to take evidence.

COMPLAINANTS: EVIDENCE

The Town and the Riverside Association joined in the investigation of the complaints registered by many citizens of the Town of Greenwich and cooperated with this Commission in presenting the case of both the Town and the Association in such a manner as to avoid repetitious and cumulative evidence.

Considerable testimony was adduced that pollutants were emitting from the stacks of the Cos Cob plant of the Railroad and many exhibits of particulates were introduced in evidence.

Ringlemann tests were made by different parties and the testimony on these tests showed that the emissions from the stacks of the Cos Cob plant were, by Ringlemann standards, pollutants.

By reason of an unusual civic pride and cooperation certain residents of Greenwich, who are professional engineers and knowledgeable in the field which was the subject of these tests, investigated the Cos Cob plant with the full cooperation of the Railroad personnel and drafted a report. This report set forth the defects in the plant

and equipment which, in their opinion, caused the pollution. The report in full is attached as Appendix A.

This report also sets forth suggestions for measures to be taken to eliminate the defects and reduce or eliminate the polluting emissions.

The Railroad agrees such defects exist but claims it does not have the funds available to do a thorough repair job, and is frankly looking for such funds from the State or Federal government. The Railroad practically takes the position of balancing the equities or priorities between continuing commuter service in Fairfield County to and from New York, or spending its own money to repair the Cos Cob plant.

In the meantime, the Railroad will repair defects when they reach certain stages of malfunction unrelated to the complaints but directly involved with continuing the flow of power to the electrified trains.

The specific recommendations of the voluntary committee of engineers for the Town are as follows:

A. Equipment	Cost
1) Replace all tubes in the mechanical collecto boiler 904	r for \$ 31,500*
2) a) Replace the four ash-collection hoppers o boilers 902 and 903	n 13,000 (estimated)
b) Replace the economizers on boilers 902 and 903	70,000*
3) Install smoke indicators and records	9,000*
4) Install newer design spinner type exhaust heads for the ash vacuum systems	9,000*
	\$132,500

^{*} Figures have been taken from the Railroad's recommendations of Aug. 22, 1968, as amended

B. Maintenance

Additional maintenance men should be employed. The Railroad has money budgeted for them, but has had difficulty employing anyone.

C. Coal

Improved coal would be helpful but is not recommended. Until the equipment is substantially improved, the use of better coal would have only minimum value, and the money could be better spent on additional maintenance.

D. Testing

The Town of Greenwich should continuously maintain one or more testing stations for measurement of particulate emissions from the power plant. Data obtained should be made available to the Railroad on a regular basis to assist it in its operations.

Preparations for such testing are under way.

Consideration should be given to making stack emission tests after completion of the above repairs.

The Railroad filed an Exhibit called New Haven Railroad Commuter Service Electrification Study, dated September 1966, prepared by Gibbs & Hill, Inc. Quoted below is only that part of this study entitled "Summary of Conclusions and Recommendations."

PART I

CONFIGURATION OF ELECTRIC-POWER SUPPLY

A. It is recommended that all traction power for the operation of the New Haven Railroad be purchased from the Consolidated Edison Company and from the Connecticut Light and Power Company, and that, insofar as traction-power generation is concerned, the operation of Cos Cob plant be discontinued.

B. It is recommended that the nominal catenary voltage be changed from 11 kv, 25 cycles to 12 kv, 60 cycles. This change involves the following attendant modifications or additions to the New Haven Railroad plant:

1. Multiple-Unit Cars (4400 Series)

Change ignitron rectifiers to silicon rectifiers. Change motors for transformer blower and oil pump from 25 cycles a.c. to d.c.

2. Locomotives

Retire from service all electric locomotives.

ADMINISTRATIVE NOTICE

The Commission takes administrative notice of its Docket No. 10515 issued after investigation of air and water pollution.

OFFER OF GAS SUPPLIER

During the hearing The Greenwich Gas Company offered to supply the Cos Cob plant with gas as the fuel to generate the necessary electrical power, and said Gas Company would make a capital expenditure of \$150,000 of its own funds to install the necessary equipment. This figure would not include any repairs that would have to be made to the boilers. The Greenwich Gas Company further states its willingness to furnish the gas at less than the present operating cost of the Cos Cob plant.

FINDING OF FACTS

- (1) It is incontrovertible that there are defects in the Cos Cob plant which, if repaired, would reduce the pollution in Greenwich. The extent of this reduction, however, would not be known until all defects have been repaired.
- (2) Deleterious pollution is emitting from the stacks of the Cos Cob plant, injuring the health, safety and property of the people of Greenwich, and is a nuisance.
 - (3) This deleterious pollution is unacceptable.
- (4) Existing conditions are unacceptable, regardless of the financial condition of the Penn Central Company or whether or not it can reasonably expect funds from some outside source such as a governmental unit with which to eliminate this aforesaid pollution.
- (5) The continuation of commuter service to and from New York by use of electric power produced by the Cos Cob plant cannot be acceptable as a superior or paramount factor or as fair exchange consideration for sufferance of the pollution by the residents of Greenwich.
- (6) The Penn Central Company is abusing its privilege as a public service company by allowing this pollution to continue and disregarding the entitlements of the residents of Greenwich.
- (7) The conduct of the Penn Central Company with respect to the Cos Cob plant pollution is plainly against the public interest.
 - (8) Alternate remedies:
 - (a) Repair the plant forthwith to effect a considerable reduction of the pollutant emission and reduce or eliminate the complaints;
 - (b) Close the Cos Cob power plant and obtain additional power from the nearest electric supplier to supplement power from its present partial supplier, the Consolidated Edison Company of New York.
 - (c) Operate the power plant but eliminate the use of coal, and use, in lieu thereof, low sulphur oil or purchase gas from the nearest gas supplier.

DECISION

The Commission took jurisdiction of this case under the provisions of Sec. 16-1, 16-11, and other pertinent sections of the Connecticut public utility law having to do with the regulatory and supervisory powers of this Commission. It is recognized by this Commission that the jurisdiction of the Air Pollution Control Commission of the State of Connecticut extends to all polluters. The Public Utilities Commission does not in any way wish to encroach upon the duties and responsibilities of the Air Pollution Control Commission. By reason of the integral powers of the Public Utilities Commission with respect to the many interrelated factors of regulation and supervision of

public service companies it has a parallel and concurrent jurisdiction in matters of pollution emanating from any public service company installation and in the interest of the safety of the public and the employes of a public service company. This Commission possesses the experience and expertise of a public service company operation and is uniquely qualified to hear and decide upon any matter affecting public service companies, the public and the employes of the public service companies. The jurisdiction of this Commission in the regulation of public service companies is, in some matters, comparable to, but not in conflict with, that of the Air Pollution Control Commission.

Based upon the foregoing, the Penn Central Company is unreasonably polluting the air in Greenwich by its operation of the Cos Cob plant, particularly in view of the available alternatives to reduce to an acceptable standard, or completely eliminate, said pollution. In failing to do so, the company is in contempt of the law of the State of Connecticut, the public interest and, in particular, the basic decent entitlements of the residents of Greenwich. The following order is promulgated by this Commission:

ORDER

Eliminate the pollution by adoption of one or more of the alternate remedies stated in the Finding of Facts, No. (8), in order to achieve the elimination of pollutant emissions from the stacks of the Cos Cob power plant.

We bereby dire that notice of the foregoing be given by the secretary of this dission by forwarding true and correct copies of this document to perfect in interest, and due return make.

Dated at Hartford, Connecticut, this 30th day of June, 1969.

Eugene S. Loughlin

Raymond S. Thatcher) PUBLIC UTILITIES COMMISSION

Harold F. Keith

County of Hartford) ss.
State of Connecticut)

Hartford, June 30, 1969

I hereby certify that the foregoing is a true and correct copy of Finding and Order issued by Public Utilities Commission, State of Connecticut.

Attest:

George J. Briffin

Executive Secretary, Public Utilities Commission

APPENDIX A

Mr. John T. Taintor, First Selectman Town of Greenwich Town Hall Greenwich, Connecticut 06830

Mr. Haynes N. Johnson, President Riverside Association 25 Hendrie Avenue Riverside, Connecticut 06878

Re: Cos Cob Power Plant of the New Haven Railroad

Gentlemen:

At your request, we have made an engineering study of the Cos Cob plant of the New Haven Railroad to determine how to reduce health problems created by the plant. Our report follows:

I

PURPOSE

For a period of years, owners of property in Greenwich have complained about emissions from the Cos Cob plant of the New Haven Railroad. This study is directed to that problem.

Our initial analysis led us to believe that the principal problem was not air suspended pollution as such, but settleable particulate matter. Air pollution (air-bourne and gaseous matter) was considered secondary.

Improvement of efficiency of operation of the plant was not included in the study or its objectives, though it is believed that some of the within recommendations could improve the overall operation of the plant.

This study, therefore, has been directed to the heavier particulates and has considered the remedies which are available to reduce particulate emission during most of the time, recognizing the age of the plant. We realize that complete cessation of particulate emission is not practical and believe that all parties, including the public, should recognize this fact.

II

METHOD OF STUDY

Our review included a series of inspections of the boilers and particle collection equipment and study of the recommendations made by the Railroad in its report to Dr. Franklin M. Foote, Commissioner of Health, on August 22, 1968. We also considered recommendations of equipment suppliers and other reports, to the extent available, and prior test reports. Analysis was made of collected samples of particulate fall-out. In addition, we discussed the matter at length

with Railroad personnel, all of whom were not only most cooperative, but extremely helpful,

III

RECOMMENDATIONS

Our recommendations recognize that the plant is old and that it may have breakdowns from time to time. However, the interests of the community require that, if it is to continue to be used, certain improvements must be made to reduce the particle matter fall-out at this time.

The adoption of these recommendations should result in substantial reduction in the quantity of emitted particulate matter. It will not, and cannot, eliminate all fall-out, only reduce it as much as reasonably possible considering the limited remaining life of the plant.

Specific recommendations follow:

A. Equipment

1)	Replace all	tubes	in	the	mechanical	collector	for		
	boiler 904							\$31,500	*

(Note: Figures marked * have been taken from the Railroad's recommendations of Aug. 22, 1968, as amended)

2)	a)	Replace boilers	the 902	four ash-collection hoppers of and 903	on	13,000 (est.)
		and the second s				(est)

b)	Replace	the	economizer	tubes	on	boilers	902	
	and 903							70,000 *

3) Install smoke in	dicators and	recorders	9.000 *
---------------------	--------------	-----------	---------

31	install smoke	indicators and recorders	9,000 *
4)	Install newer heads for the	design spinner type exhaust ash vacuum systems	9,000 *
			\$132,500

B. Maintenance

Additional maintenance men should be employed. The Railroad has money budgeted for them, but has had difficulty employing anyone.

C. Cov

Improved coal would be helpful but is not recommended. Until the equipment is substantially improved, the use of better coal would have only minimum value, and the money could be better spent on additional maintenance.

D. Testing

The Town of Greenwich should continously maintain one or more testing stations for measurement of particulate emissions from the power plant. Data obtained should be made available to the Railroad on a regular basis to assist it in its operations.

Preparations for such testing are underway.

Consideration should be given to making stack emission tests after completion of the above repairs.

IV

DISCUSSION

A. Plant Description

The plant uses three boilers, '#'s 902, 903 and 904. Normally 904 is the base line boiler and 902 or 903 is added to the line during peak periods.

Pulverized coal is burned in the boilers. The raw coal has been oil treated prior to shipment in order to reduce windage loss in handling and during open storage of reserves at the plant. It is crushed during unloading and transported to the pulverizer feed hoppers. Each boiler is served by two pulverizers which grind the coal to a fine dust which is mixed with air and burned in suspension in the furnaces. The resulting fly-ash is partly collected as coarse slag in the furnace hoppers but mostly collected in the combination mechanical-electrical dust collectors placed after each boiler. A very fine portion of dust passes through the collectors and is emitted from the stacks.

The separated dust falls into hoppers below the dust collectors and is periodically removed by a vacuum ash conveying system through a steam aspirator to an ash separator from which the dust is slewed with water to the ash dump. The steam and air used in the ash conveying system are vented out the top of the ash separator to the atmosphere.

The size of particles leaving the boilers and entering the dust collectors is largely determined by the fineness to which the coal is ground in the pulverizers and the maintenance of stable and efficient combustion in boiler furnaces.

The dust collectors cannot practically be made 100% efficient to collect all the dust; there is always a certain percentage which goes through the collectors. However, the mechanical collectors should be quite efficient for the larger size particles which are the main complaint.

B. Conditions affecting coarse dust emission

The coal fineness leaving the pulverizers is influenced by the inherent ease with which the coal is ground down to a small size. Coals from different seams are likely to vary in their Hardgrove grindability index. The pulverizers in this plant require an easily ground coal with a high grindability index of around 100 in order to get fine pulverization.

All coal grinding equipment wears out with use in spite of the special wear resistant materials employed. The type of pulverizers used in this plant will grind less finely as the parts wear out.

The coal fineness also depends on how the pulverizers are operated. For example, high loads or high air flows through the pulver-

izers are apt to produce coarser coal particles.

The mechanical dust collectors are also subject to wear by abrasion of the high velocity dust particles. This wear, if it progresses far enough, tends to reduce the efficiency of the collectors. The high gas velocities are required to make these mechanical collectors efficient. Efficiency is also affected by air leakage in the system, as, for example, through the collecting hoppers

If the hoppers under the dust collectors are for some reason, not emptied, they will fill up, causing the dust which would have been separated to pass on to the next hopper or up the stack.

If the dust collector hoppers are unloaded too quickly, the ash conveying systems become overloaded and may discharge some dust out the ash separator vent.

To summarize, less of the heavier particulate matter will get out of the stacks and settle in the vicinity if:

- 1. The coal has high grindability.
- 2. The primary crusher is in good condition so the coal is well crushed before it gets to the pulverizers.
- 3. The pulverizers are kept in good condition with the worn parts replaced before the coal fineness deteriorates too much.
- 4. The mechanical dust collectors are kept in good condition and their hoppers emptied regularly.
- 5. Furnaces and auxiliaries are maintained and operated to provide efficient combustion.

A lower ash coal will help somewhat, since there is less particulate matter to collect, but will not entirely offset worn pulverizers and dust collectors. Lower ash content of the coal may reduce wear of dust collectors and pulverizers somewhat, but there is an economic trade-off here since the lower ash coals cost more.

There are sporadic conditions which will temporarily increase the coarse dust emitted from this plant such as:

- 1. Some dust accumulates around a plant of this sort all the time. A strong gusty wind, blowing through the plant after a period of dry, relatively calm weather, will unavoidably carry out some dust in spite of precautions taken by the plant personnel such as oil treatment of the coal and calcium chloride treatment of the ash pile.
- Upsets in boiler operation can occur unpredictably and, though normally handled in a routine manner, sometimes result in an additional amount of heavier dust being emitted.

These sporadic dust emissions, while unfortunate, are likely to continue, and there is not very much that can be done about them. However, they probably do not contribute to the majority of the dust out of the stacks.

C. Remedies for coarse dust emission

1. Boiler #904

Approximately 85% of the mechanical dust collector elements have been in service for about 19 years, with the remaining elements having been replaced over the past several years. From the condition of the elements removed, it is certain that many of the elements which have not been replaced are about to be worn through if they have not already done so. This life so far exceeds the normal expected life of the original elements, that the most practical thing to do would be to remove all the old aluminum elements and replace them with new cast iron elements.

Except for outages for maintenance and inspection, this boiler is in continued service and furnished the base steam load of the plant. It is not scheduled for outage until May 1, 1969, so that it may not be possible to get the mechanical dust collector repaired before cold weather sets in.

2. Boilers #902 and 903

The mechanical dust collector tubes on these smaller boilers are in reasonably good condition.

These two boilers are normally used only intermittently to handle peak train loads. Generally, one of these two smaller boilers will be fired up in the morning for several hours and again in the early evening.

The mechanical dust collectors on these two smaller boilers are not as efficient in original design as the mechanical collector on unit #904. Thus, it is to be expected that a greater proportion of coarse particles will pass through them than for unit #904. For this reason it appears to be important to maintain good coal fineness from the pulverizers on #902 and 903 so that fewer coarse particles will enter their mechanical collectors.

The ash collection hoppers on boilers 902 and 903 have extensive leaks in spite of continuous efforts to keep them in repair. This disrupts the normal flow through the collectors and so reduces their efficiency. These hoppers should be replaced.

Water leakage from the economizer tubes in boilers 902 and 903 wets the ash and frequently makes it impossible to remove the collected dust from the hoppers. The economizers should be completely re-tubed.

3. All Pulverizers

Periodic pulverized coal samples from each pulverizer should be taken at frequent enough intervals to spot poor fineness as a result of high loads, any shipment of coal suspected of not being up to standard, or excessive wear of pulverizer parts. Also the pulverizer parts should be inspected visually for excessive wear.

Both of the above procedures are followed to a certain extent by the plant, but, due to a reduction in personnel in recent years, the fineness checking on 902 and 903 has not been as frequent as formerly.

There are other important financial and operating benefits, besides decreased coarse dust emission, which accrue from keeping coal

fineness up, such as reduced carbon loss in the fly ash, less wear on the pulverizer fan blades, induced draft fan blades, coal piping and burners, boiler and economizer tubes, dust collector parts, and ash handling systems. There should also be decreased slag deposits in the furnaces.

It is also suggested that the Hardgrove grindability of the coal be checked if coal comes from a different seam or supplier.

4. Smoke Recording Equipment

Installation of smoke recording equipment will provide continuing smoke level readings to assist the operators in controlling stack emissions.

5. Increased Personnel

Some of the combustion indicating equipment, such as CO₂ devices, appear to require attention to work properly. It is suggested that there is sufficient instrument and other maintenance work, as well as pulverized coal sample work to be done, to keep the coarse dust emission down, that additional men be hired, if possible.

6. Testing

Once the mechanical dust collectors and the pulverizers on the boiler have been repaired and are certified to be in good condition, it would be helpful if the efficiency of the collector were determined by test and compared with the original acceptance tests. As a part of the dust collector test, it is suggested that the pulverizers be tested and flue gas analysis traverses be taken.

The installation of smoke indicators and recorders will assist plant operators in their efforts to reduce emmission. The Town of Greenwich should monitor the particulate fall-out in the vicinity of the plant and continue to develop a satisfactory method of rapidly determining the fall-out in coarse sizes so that extraneous factors not connected with the plant can be identified and dealt with separately. Copies of the Town's test results should be furnished to the Railroad on a regular basis and discussed with them.

It is also suggested that the Railroad keep the Town of Green-wich posted on the physical condition of the mechanical dust collectors and each pulverizer. It would be helpful if copies of the periodic pulverized coal fineness checks and data pertaining to replacement of worn parts of the pulverizers could be sent to the Town.

D. Items not covered by this report

Matters not considered include:

- 1. Smoke emission due to things other than large particle emissions.
- 2. Maintenance and other factors not related primarily to control of coarse dust emission. These could have a serious effect upon the continuity of operation of the plant.
- 3. Possibilities of improving combustion during cold start-ups of boiler 902 or 903 twice a day.

V

ACKNOWLEDGMENT

Through the cooperative efforts of First Selectman John T. Taintor of Greenwich and Messrs. Frederick J. Orner, William A. Russell, and C. Herbert Swanson of the New Haven Railroad, the plant has been made available for a series of inspections and all questions asked of the plant personnel by members of the group representing the Riverside Association have been freely answered where information was available.

The Greenwich Department of Health, and Mrs. Laura Morrison in particular, have engaged in testing work and provided substantial data.

Engineers other than the undersigned who assisted in this study include Messrs. James A. Finney, Jr., Ralph R. Hennig, Arnold Peterson, Ralph Pireida, Robert N. Rickles and Louis Terraciano.

Such cooperation will continue to make the Town of Greenwich a good place in which to work and live.

Respectfully submitted,

Roland T. Bryan
Leslie C. Hardison
Andrew G. Steever
for the Riverside Association

September 19, 1968

EPARTMENT OF HEALTH
TOWN HALL ANNEX
EENWICH, CONNECTICUT 06830
(203) 869-8800



TOWN OF GREENWICH

January 23, 1975

GEORGE KRAUS, M.D., M.P.H.
DIRECTOR OF HEALTH
FRANK SINGLETON
DIRECTOR OF ENVIRONMENTAL HEALTH
LAURA MORRISON
DIRECTOR OF LABORATORY AND
AIR QUALITY
LOUIS W. PALOMBA
HEALTH EDUCATOR

.50

STATEMENT OF

LAURA MORRISON

DIRECTOR OF LABORATORY & AIR QUALITY

FOR THE TOWN OF GREENWICH

I wish to speak in favor of the adoption of the proposed amendments to the Connecticut Implementation Plan which subject Connecticut Transportation Authority facilities to the Connecticut Implementation Plan.

The exemption of facilities owned, operated or under contract to the Connecticut Transportation Authority from the State Implementation Plan has caused our greatest difficulties in the fight for clean air in Greenwich. Because of Connecticut General Statutes Section 16-344, the largest stationary source of air pollution in Greenwich, the Penn Central's Cos Cob Power Plant, operating under contract with the Connecticut Transportation Authority, is now exempt from all Clean Air regulations, registration, permits, and even emergency episode planning. As far as our official records are concerned this facility does not exist. The fact that this plant is not included in State Air Pollution regulations creates many

problems in air pollution control and air resource planning.

However, these problems are increased many times because of

the fact that an exempted source, the power plant, is a continuous

violator, undoubtedly the worst air polluter of its kind in the

state.

Procedures for routine enforcement of local and state regulations become unnecessarily difficult when minor violators see the black clouds of smoke emitting unabated and unchecked from a facility not subject to local, state or federal regulations. Local industries and citizens are expected to accept restrictions and spend large sums of money to clean the air and prevent further degradation, without equal protection under the law.

It has been our experience with the CTA source and others, that unofficial schedules and promises, although made in good faith, if not enforceable by law, are endlessly delayed or never met.

/gab

TMENT OF HEALTH
WN HALL ANNEX
H. CONNECTICUT 06830
203) 869-8800



TOWN OF GREENWICH

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DEPARTMENT OF HEALTH
TOWN HALL ANNEX
GREENWICH, CONNECTICUT 06830
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TOWN OF GREENWICH CONNECTICUT

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ONLY COPY AVAILABLE

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GRENWICH

TMENT OF HEALTH DWN HALL ANNEX CH. CONNECTICUT 06830 203) 869-8800

TOWN OF GREENWICH

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BOARD OF HEALTH
GREENWICH, CONNECTICUT 06830
TEL. 869-8800 EXT. 309



TOWN OF GREENWICH

WALTER MIRA M.S. Chairman

51

February 11, 1975

Environmental Protection Agency, Region I John F. Kennedy Building Boston, Massachusetts

Gentlemen:

The Board of Health of the Town of Greenwich requests that the Cos Cob Power Plant's exemption from the Federal Clean Air Act of 1972 be removed.

The Board of Health cannot understand why your agency allows the Connecticut Transportation Authority to operate the Cos Cob Power Plant in violation of local, state and federal air pollution regulations. The health hazard produced by the continuous and severe air pollution at the Plant has been for many years the worst air pollution problem confronting the Board of Health.

Very truly yours,

Walter H. Jura, Chairman Board of Health



JOSEPH B. BURNS COMMISSIONER

STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

24 WOLCOTT HILL ROAD, P.O. DRAWER A WETHERSFIELD, CONNECTICUT 06109

FEB 51975 received Du Bramel

February 3, 1975

52

Regional Administrator
Environmental Protection
Agency
Region I
JFK Building
Boston, Massachusetts 02203

Dear Sir:

Enclosed are the original and four copies of a Statement by the Connecticut Department of Transportation relative to the proposed rule making for facilities operated by the Connecticut Transportation Authority.

I or a representative will attend the hearing in Greenwich on February 11, 1975, at 8:00 P.M.

Very truly yours,

William J. Lynch

Transportation Counsel

Attachments 5

STATEMENT BY THE CONNECTICUT DEPARTMENT OF TRANSPORTATION REGARDING CONTROL OF AIR POLLUTION FROM FACILITIES OF THE CONNECTICUT TRANSPORTATION AUTHORITY

The Connecticut Department of Transportation (CONNDOT) is strongly committed to the goal of achieving Federal air quality standards in Connecticut as quickly as practicable.

One element of achieving the air quality standards is the reduction of motor vehicle traffic by providing an alternative to the passenger car and freight shipment by trucks. That alternative is to expand Connecticut's rail system which presently carries 1.5 million Penn Central passengers, additionally handles nearly 1000 AMTRAK trains and carries nearly 3 million tons of freight monthly in the New Haven-Greenwich-New York City corridor.

Another element of achieving the air quality standards in the Cos Cob area of Greenwich is to eliminate the emissions from the Penn Central Railroad's power plant at Cos Cob. This will be accomplished by converting the entire electrical system of the railroad to use commercial electric power and then shutting down the Cos Cob power plant.

The substantial commitments of CONNDOT's resources already made demonstrate the good faith effort of the Department. Progress toward implementing both elements of this program is evident. We urge that no

of, or lead to delays in, achieving the goals of our agency and yours.

CONNDOT must emphasize that many legislative mandates and our resulting programs have strongly committed us to a course of action based on maintaining uninterrupted rail service in the New Haven-New York City corridor. Other commitments arise because this is a joint effort involving the States of Connecticut and New York, Penn Central Transportation Company, The Connecticut Light and Power Company, Consolidated Edison of New York, and the United States Government.

The program which has been undertaken is a massive one.

The program is also complex because each item of the program must be implemented in sequence and only after it has been tested to assure that it is truly operational. Many of the sequential steps require close coordination to assure that rail service is not interrupted.

The massiveness of the program is evidenced by the costs involved. The conversion from Cos Cob supplied power to commercially supplied power for Connecticut's portion of the rail line will cost approximately \$34 million. Purchase and installation of electrical equipment to provide 60 cycle traction power will cost approximately \$12 million. Revising the signalization system to be compatible with 60 cycle operation will cost an additional \$22 million; this figure includes some safety and operational improvements, as well as direct conversion. These costs are in addition to costs of purchasing new rail cars capable of using 60

cycle power and building high platforms for improved service; these actions have already been taken.

The costs of this program are paid for in part by Federal funds from UMTA. The procedure for obtaining Federal funds, however, adds additional delays measured in months for UMTA to review and approve the specifications for each individual contract. The attached summary of contracts indicates the commitment, the magnitude of the total program and the difficulty in achieving rapid completion.

Summary of Program to Decrease Emissions at the Cos Cob Power Plant

The power plant at Cos Cob is an old coal burning generating plant which supplies electric power for rail operations throughout southwestern Connecticut. The plant is owned by the Penn Central Railroad which is in bankruptcy and supplies electrical power for rail services which are operated under the jurisdiction of the Connecticut Transportation Authority (CTA), a unit of CONNDOT. The power required cannot be acquired from other sources because rail operations presently require 25 cycle power, rather than the 60 cycle power commonly produced and supplied by the public utility companies.

The program to decrease emissions consists of two phases.

The final and by far the most important phase is to discontinue operating the Cos Cob power plant. The interim phase is to minimize emissions from Cos Cob and to decrease the load on Cos Cob. Substantial efforts

and progress have been made to date in implementing both phases.

The interim phase included extensive overhaul of the plant which was completed in the summer of 1974 and which has already reduced emissions. This overhaul included refurbishing each unit, installation of automatic control equipment, efficiency improvements on stack cleaning equipment, installation of stack monitoring instrumentation and repair of coal grinding equipment. It should be pointed out that there would be no justification for the expenditure of more than \$300,000 for this purpose, other than the good faith effort to maximize pollution control pending shutdown of Cos Cob.

By the end of 1975, conversion of the electrification of the segment from New Haven to Norwalk is scheduled to be completed and tested. At that time, 60 cycle power purchased from The Connecticut Light and Power Company's Devon plant will be used in this segment substantially decreasing the load on Cos Cob.

The complete shutdown of the Cos Cob power plant and the complete elimination of emissions will not be possible by the end of 1975.

The time lost which has resulted from escalating costs, long lead times, delays in Federal funding and the need for a far more extensive revamping of the signal system to improve operational safety has set back any chance of achieving a complete shutdown well into 1976. It should be emphasized that conversion to purchase power could take place earlier. However, there could be an adverse effect on this signal system which could adversely affect the operating safety of the rail system. As a consequence, the signal current

must be modified to maintain a safe signal system.

In proposing that the facilities of the Connecticut Transportation Authority be governed by the Connecticut Regulations for the Abatement of Air Pollution, Sections 19-508-1 through 19-508-25, the Administrator must consider the substantial efforts already made and committed and the time limitations which prevent accelerating completion. The CONNDOT is moving as quickly as possible to conclude the shutdown of the Cos Cob generating station. Premature shutdown of this facility will cause approximately 23,000 users of rail service to seek other means of transportation into New York City. Most of these would probably transfer to buses or private automobiles which would add to the pollution of the air.

Connecticut, therefore, respectfully asks that implementation of this proposed regulation be delayed until December 31, 1976.

William J. Lynch

Transportation Counsel

January 30, 1975

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Summary of Contracts to Complete Reelectrification of Penn Central Rail Facilities

Item of Work	Contract Number	Amount	Status
Design conversion from 25 to 60 cycle power and provide construction inspection	NH 12	\$ 559,160	Design 95% complete
Manufacture 2000 KVA auto transformers	NH 16	143,955	Complete
Manufacture vacuum circuit breakers	NH 17	553,576	Complete
Manufacture oil circuit breakers	NH 19	307,325	Delivery by March 1, 1975
Purchase 27.6 KV supply station switch structures	NH 12A	350,000*	Approved by UMTA for advertising
Purchase protective relay control boards	NH 12B	375,000*	Approved by UMTA for advertising
Final connections including hazardous connections	NH 20A	541,018*	Submitted to UMTA for approval November 12, 1974
Concrete and steel structures	NH 21	1,331,280*	Ready for submittal to UMTA
Design and construction of new signal system	NH 15	507,351	Work in progress
Purchase material - Aerial T screen cable	NH 15B	344,193	Awarded. Due in July
Purchase impedance bond layouts	NH 15D	417,720	Awarded
Purchase signal cable	NH 15A	2,500,000*	Bid opening January 30, 1975
Purchase power frequency changing equipment	NH 15C	1,025,000*	Bid opening January 30, 1975
Purchase communication cable	NH 15E	124,000*	Bid opening January 30, 1975
Modernize signal system	NH 23A	549,000*	Reviewing for UMTA Submittal

^{*} Estimated Costs

Items Awaiting UMTA Approval of Follow-on (Phase III) Grant

Completion of main line electrification construction Completion of CL&P supply station Completion of signalization (UMTA approval date estimated to be May or June 1975) Testimony Concerning Proposed Regulations by the Environmental Protection Agency for the Control of Air Pollution from Facilities Owned, Operated or under Contract with the Connecticut Transportation Authority

By Peter L. Alagna, Air Pollution Control Officer Stamford Air Pollution Control Agency

Tuesday, February 11, 1975 Meeting Chamber, Town Hall Greenwich, Connecticut

Good Evening! My name is Peter Alagna, Air Pollution Control Officer for the City of Stamford.

The Air Pollution Control Agency in Stamford is among seven local agencies in the State of Connecticut which have been delegated authority by the Commissioner of Environmental Protection to enforce mandates of the Connecticut Environmental Protection Act as amended in June of 1973 by PA73-665.

Pursuant to this Act, the Stamford Agency enforces the Connecticut
Regulations for the Abatement of Air Pollution for meeting national ambient
air quality standards and also monitors air pollutants to evaluate its progress
toward meeting these national standards.

Suspended particulate matter is one major pollutant which receives the most intensive air monitoring surveillance as six sites located throughout the City of Stamford record the air quality levels of this pollutant.

Calculations of these levels for the project periods between July, 1972, through June, 1973, and July, 1973, through June of 1974, indicate that the Annual Geometric Means are $88ug/m^3$ and $84~ug/m^3$ respectively. These are substantially higher than the national primary standard of 75 ug/m^3 and, secondary standard of 60 ug/m^3 . The attached graph will serve as additional documentation of this data.

The enforcement activities undertaken by the Stamford Agency to reduce the levels of this industrial pollutant within its area of jurisdiction have

been conducted under rigourous application of the Connecticut Regulations for the Abatement of Air Pollution, and, consequently, all industrial sources of major size have been brought under compliance by requiring installations of the best technologically available air pollution control equipment.

The only exceptions to these abatement efforts are the continued use of single-chamber incinerators from a number of multi-dwelling units and the municipal bulky waste incinerator. The former sources are presently under injunctive action initiated by the State Attorney General, while the latter is in the process of undergoing major upgrading to comply with Connecticut emission standards.

These air pollution sources when compared to the emissions of the Cos Cob Power Plant, which is leased to the Penn Central Transportation Company by Connecticut Transportation Authority, are considered minor contributors to the air levels of particulate matter recorded in Stamford.

A major contributor to these recorded levels of suspended particulates in Stamford is the Cos Cob Power Plant, located approximately five miles South West of the center of Stamford.

Metereological Wind Roses indicate that prevailing winds in Stamford are from the south west and application of the accepted Gaussian Model for plume dispersions would readily indicate that the Cos Cob power plant is a major contributor to the levels of suspended particulates in the City of Stamford.

Therefore, in order that the City of Stamford be able to meet national ambient air quality standards for particulate matter, I urge the Administrator of the Environmental Protection Agency to adopt Sec. 52.380, amending Part. 52 of Chapter I, Title 40 of the Codefied Federal Register and to enforce the Connecticut Regulations for the Abatement of Air Pollution at the earliest time possible in order to control emissions of the Cos Cob power plant as expeditiously



as is practicable.

Thank you for the opportunity to participate in these proceedings and I hope that my comments will be found useful.

Attachment: Graph of air quality levels for particulate matter as a composite of Hi-Vol sites in the City of Stamford

Particulate Matter - Composite of Hi-Vol Sites

ug/m³

260

240

220

200

180

160

140

120

100

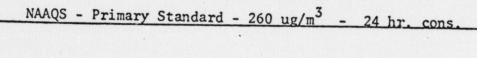
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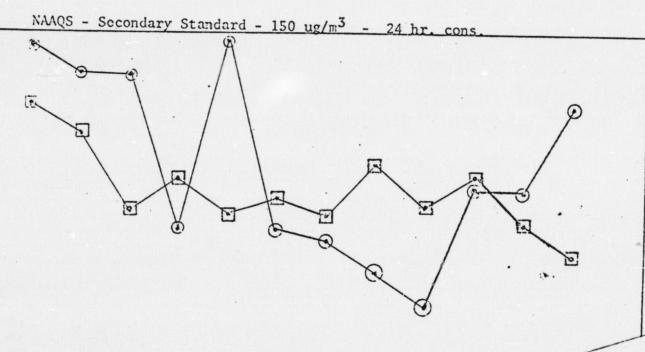
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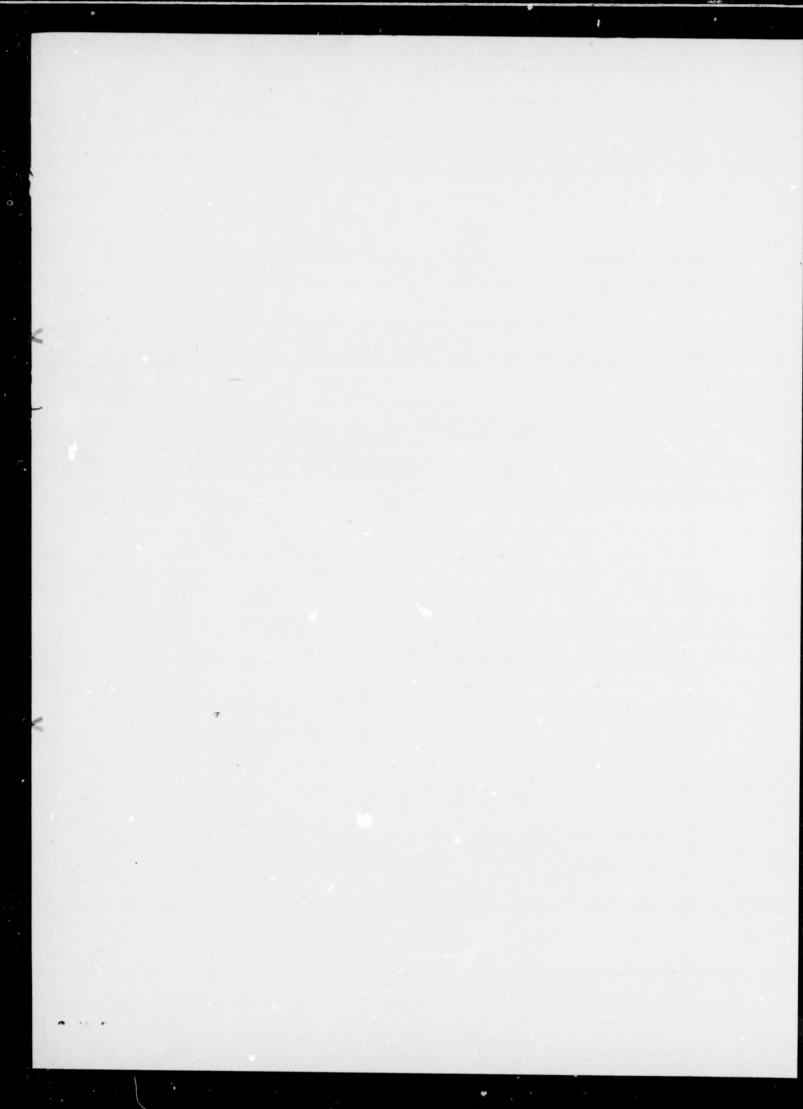
○--○ 1972-1973 □--□ 1973-1974

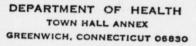
1972-1973 Annual Geometric Mean = 88 ug/m³

1973-1974 Annual

Geometric Mean = 84 ug/m³

NAAQS is







GEORGE KRAUS, M.D., M.P.H. DIRECTOR OF HEALTH

TOWN OF GREENWICH CONNECTICUT

February 18, 1975

Environmental Protection Agency, Region I John F. Kennedy Building Boston, Massachusetts

Gentlemen:

I urge you to remove the exemption of the Penn Central Railroad's Cos Cob Power Plant from the Federal Clean Air Act of 1972.

The exemption of Connecticut Transportation Authority facilities from the Clean Air Act has resulted in a severe and continuing health hazard to the Town of Greenwich.

The Cos Cob Power Plant is the biggest stationary air polluter in the Town of Greenwich. It is in continuous violation of local, state and federal air pollution regulations. Unless the exemption is removed from the Cos Cob Power Plant, the hazard to health and life will become progressively worse.

George Kraus, M.D. Director of Health



Connecticut Air Conservation Committee

45 ASH STREET, EAST HARTFORD, CONNECTICUT 06108 • PHONE 528-9437

A Section of The Connecticut Lung Association

EARL M. URAM, Sc.D.

JAMES A. SWOMLEY Executive Director

55

February 6, 1975

OVERNING COUNCIL

RICHARD J. BENOIT, Ph.D. prwich

GEORGE N. BOWERS, JR., M.D. est Hartford

NICHOLAS C. DEPAOLO

MRS. DAVID A. GILLETTE st Hartford

THOMAS J. GODAR, M.D. est Hartford (Ex Officio)

WARREN A. GRETEN eriden

MRS. R. SAMUEL HOWE

JAMES F. JEKEL, M.D. orth Haven

MISS MARIE LEVAN

WALLACE C. PRINGLE, Ph.D. addam

CHARLES E. ROH, M.D. est Hartford (Ex Officio)

MRS. ROBERT E. WIECHE tchfield

DAVID C. WIGGIN ratford

PHILIP W. WOODROW

TAFF

BARBARA F. BASS ogram Assistant

John A. S. McGlennon, Administrator Region I Environmental Protection Agency JFK Building

Boston, Mass. 02203

Dear Mr. McGlennon:

This is to notify you that the Chairman of the Connecticut Air Conservation Committee, a section of the Connecticut Lung Association, is intending to deliver a short statement at the February 11 hearing as described in the January 16 Federal Register (a copy of which is enclosed).

Also enclosed are five copies of our testimony.

Sincerely,

Literar & for

Stephen B. Soumerai Program Assistant

SBS: arg

Enc.



FEB 14 1975

4) Where the Veterans Administraundertakes to perform for a rester or for any other person services th are very clearly not required to performed under section 552, title 5, ited States Code, either voluntarily or ause such services are required by ne other law teg., the formal certifiion of records as true copies, attestaunder the seal of the agency, crean of a new list, etc.), the question of arging fees for such services will be ermined by the official or designee horized to release the information der § 1.556, in the light of the federal er charge statute, 31 U.S.C. 483a, any ier applicable law, and the provisions § 1.526(1).

0. Section 1.556 is revised to read as

1.556 Requests for other reasonably described records.

Each department, staff office, and field ation head will designate an emoyce(s) who will be responsible for tial action on (granting or denving) quests to inspect or obtain information om or copies of records under their risdiction and within the purview of 1.553. This responsibility includes mainining a uniform litting of such requests. ita logged will consist of: Name and ddress of requester: date of receipt of equest; brief description of request; ction taken on request, granted or enied; citation of the specific section hen request is demed; and date of reply the requester, Any legal question areang in a field station concerning the reease of information will be referred to he appropriate District Counsel for disosition as contemplated by \$13.401 of his chapter. In Central Office such legal jucstions will be referred to the General counsel. Any administrative question vill e referred through administrative channels to the appropriate department or tail office head. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

10. Section' \$557 is revised to read as follows:

§ 1.557 Administrative review.

(a) Upon denial of a request, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial, cite the specific exemption in § 1.554 upon which the dental is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise that the denial may be appealed to the Administrator.

(b) The final agency decision in such appeals will be made by the Adminis-

trator or Deputy Administrator.

11. Section 1.558 is revised to read as follows:

§ 1.558 Judicial review.

Any person from whom the Veterans Administration has withheld information or records after proper request as pro-

vided in \$ 1.553 may file a complaint in the appropriate United States district court as provided in 5 U.S.C. 552(n) (4). The district court review is designed to follow final action at the agency head

12. Section 1.559 is added to read as follows:

§ 1.559 Annual report to Congress.

(a) On or before March 1 of each calendar year the Administrator will submit a report to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. (b) The report will be compiled by

the Controller and will include: (1) The number of determinations made by the Veterans Administration not to comply with requests for records made to the Veterans Administration

under \$ 1.550 series and the reasons for

each such determination. (2) The number of appeals made by

denial of information.

(3) The names and title or positions of each person responsible for the denial

of records requested under \$ 1.550 series. and the number of instances of partici-

pation for each.

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a) (4) (F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of every regulation made by the Veterans Administration regard-

ing 5 U S C. 552

(6) A copy of the fee schedule and the total amount of fees collected by the Veterans Administration for making records available under 5 U.S.C. 552.

(7) Such other information as Indicates efforts to administer fully 5 U.S.C.

Approved: January 13, 1975.

By direction of the Administrator.

[SEAL]

ODELL W. VAUGIIN, Deputy Administrator.

[FR Doc.75-1455 Filed 1-15-75;8:45 ani]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52] [FRL 285-4]

CONNECTICUT

Control of Air Pollution From Facilities Owned, Operated or Under Contract With Connecticut Transportation Authority

On May 31, 1972 (47 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator initially approved the State Plan for implementation of the National Ambient Air Quality Standards in the State of Connecticut. The Administrator's ap-

proval of the Legal Authority section of that Plan was based on the assumption that the State had the legal authority required by 40 CFR 51.11, including authority to prevent construction, modiacation or operation of any stationary source where emissions from such sources will prevent the attainment or maintenance of a national standard.

Subsequently, the Connecticut Su-preme Court ruled in "Town of Greenwielt v. Connecticut Transportation Authority et al.", (Connecticut Law Jour-pril, May 7, 1971, at D. that Connecticut General Statutes Section 16-311 exempts acilities owned, operated of under conract with the Connecticut Transportaion Authority from the State Implemenution than. Therefore, under the presat state of the law in Connecticut, the State does not have the legal authority required by the Clean Air Act and EPA regulations to control a group of facilities controlled by the State in accordance with the State's Implementation c2) The number of appeals made by states with the States in a persons under § 1.550 series, the result of Plan. Insoftr as such facilities are exsuch appeals, and the reason for the action upon each appeal that results in a denial of information. EPA hereby proposes under authority of Section 110 of the Act, to disapprove them to that extent.

Section 110(c) (2) of the Clean Air Act direct: the Administrator to publish proposed regulations to be substituted for any portion of a plan submitted by a state which he determines not to be in accordance with the requirements of section 110 of the Act, which regulations shall become a part of the state implementation plan. The Administrator hereby proposes to promulgate regulations applicable to all Connecticut Tray portation Authority which regulations are identical to Conof All Pollution Sections 19-508-1 through 19-508-25 inclusive.

Copies of the regulations which are being proposed are available for public inspection during normal business hours at the Office of Public Affairs, EPA, Room 2263, John F. Kennedy Building, Boston Massachusetts 02203, and at the Air Compliance Unit, Connecticut Department of Environmental Protection, State Office Building, Hartford, Connecticut 06115.

Notice is hereby given of a public hearing concerning the proposed regulation to be held on February 11 at 8 p.m., Town Hall, Greenwich. The hearing will be conducted informally. Technical rules of evidence will not apply. Interested persons wishing to make a statement at the hearing will be afforded the opportunity to do to. The time for making a statement will be limited. Such persons are requested to file a notice of their intention to make a statement no later than fifteen days prior to the hearing and, if practicable, to submit five copies of the proposed statement to the Regional Administrator of the Environmental Protection Agency, Region I, JFK Building, Boston, Massachusetts 02203. Interested parties are also invited participate in this rulemaking by subattling written comments, preferably in riplicate, To Mr. Thomas Devine, Chief, dr Branch, Region I, U.S. Environ-nental Protection Agency, J. F. Kennedy Pederal Building, Boston, Massachusetts 2203. All comments received within 30 lays of the publication of this proposal will be considered.

A copy of all public comments will be tvallable for inspection at the Office of Public Affairs, Region I, U.S. Environnental Protection Agency, Room 2203, I. F. Kennedy Federal Building, Boston,

Massachusetts 02203.

(Sec. 110(c), Clean Air Act, as amended (42 U.S.C. 1057c 5(c))) .

Dated: January 8, 1975.

JOHN QUARLES, Acting Administrator.

Part 52 of Chapter I, Tille 40 Code of Federal Regulations is hereby proposed to be amended as follows:

Subpart H-Connecticut

1. In § 52.377, paragraph (b) is added as follows:

§ 52.377 Legal authority.

(b) The requirements of § 51.11(a) of this chapter are not met because the State does not have the legal authority to enforce approved unplementation plan regulations against facilities owned, operated, or under contract with the Connecticut Transportation Authority.

2. A new \$ 52.380 is added, as follows: § 52.380 Rules and regulations.

Connecticut Regulations for the Abatement of Air Pollution Section 19-508-1 through 19-508-25 inclusive, as approved by the Administrator, shall apply in all respects to facilities owned, operated or under contract with the Connecticut Transportation Authority.

[FR Doc.75-1545 I'lled 1-15-75;B:15 am]

[40 CFR Part 52] [FRL 322 6]

REVISIONS TO NEW JERSEY TRANSPOR-TATION CONTROL FLAN AND PLANS FOR ATTAINMENT AND MAINTENANCE OF SLCONDARY STANDARD FOR SUL-FUR OXIDES IN NEW JERGEY

Notice of Public Hearing

On October 3, 1774 (39 FR 35686), the Administrator published in the PEDERAL REGISTER a notice which announced a proposed plan for attainment and maintenance of the national secondary standard for sulfur oxides. In this notice of proposed rulemaking the Administrator alguified his intention of holding a public hearing on the proposed plan and indicated that such hearing would be held no sooner than 30 days following publication of the notice of proposed rulemaking.

On November 15, 1974 (39 FR 40306). EPA published in the PEDERAL REGISTER two proposed regulations for the New Jersey Transportation Control Plan.

These proposed regulations are § 52.1586. Heavy-duty retrofit, and § 52.1596, Organic materials. Also in this Proceed Rug-HIER notice EPA proposed to amend § 52.1583, Regulation for annual inspection and maintenance, to provide for emissions inspection of heavy-duty, gasoline-fueled vehicles. In this notice of proposed rulemaking, the Administrator indicated that public hearings would be held no sooner than 30 days following publication of the proposed rules.

In addition, on October 16, 1974 the Commissioner of the New Jersey State Department of Environmental Protection submitted to the U.S. Environmental Protection Agency (EPA) two revisions to N.J.A.C. 7:27-15.1 et seq., Contiol and Prohibition of Air Pollution from Light-Duty Gasoline-Fucled Motor Vehicles. These revisions delay implementation of Phases II and III of the emissions inection program from July 1, 1974 and July 1, 1975 to February 1, 1975 and Febuary 1, 1976, respectively, and allow an exemption from the program for any pre-1968 model year vehicle or classification of light-duty gasoline-fueled vehicles. Even thou, h EPA public hearings are not required on this subject, since the State already held hearings, EPA will also entertain comments on the above subject in order to gather more data for the EPA final decision.

As was previously announced in the "Treaton Times" of January 10, 1975 and the "Newark Star Ledger" of January ary 1, 1975, the dates, times, and places when the public hearings on these proposals for the New Jersey plan will be

held are the following:

NEW JERSET

Junuary 20, 1975 at 10 a.m. to: Their Auditorium Bealth & Sericulture Building John High Plaza Trenten, New Jer. cy January 21, 1975 at 10 am. Poem 312 -College Center Newark College of Engineering 150 Blecker Street Newark, New Jerrey Hearing Officer: Paul Bermingham

Person, wishing to participate in the public hearing should specify their intentions to the Regional Administrator or contact the hearing officer at the site and time of the public hearings.

Copies of the material which will be considered at the public hearing are available for public inspection at the Freedom of Information Center, 401 M Street, SW., Wachington, D.C. 20469 and at the Region II Office, 26 Federal Plaza, York, New York 10007, Room 907. Public comments on the proposals under consideration can be submitted to the Regional Administrator, U.S. Environmental Protection Agency, Room 1009, 26 Federal Plaza, New York, New York 10007. Comments received before February 15, 1975 will be considered.

Dated: January 14, 1975.

EDWARD P. TUERIC, Acting Assistant Administrator for Air and Waste Management. [FR Doc.75-1081 Filed 1-15 76;8:67 am]

[40 CFR Part 429]

(FRL 321-61

TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY

Proposed Effluent Limitations and Guidelines

Notice is hereby given that the Environmental Protection Agency (LPA) is proposing to amend 40 CFR 429-Products Processing Timber Source Category, Subpart 1-Wet Storage Subjectegory, \$\$ 429.92, \$29.93 and 429.95 as set forth below. 40 CFR 429 was promulgated on April 18, 1974 pursuant to sections 301, 301 (b) and (c). 206(b) and 307(c) of the Federal Water Pollution Control Act as amended 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500 (the Act).

Daring the development of Subpart I. it was determined that the information available to the Agency was not presented in a form adequate to propose limitations and standards on the biologically related parameters measurable in efficients from wet storage operations. Because of the time constraints on the Agency as a result of the order by the Federal District Court for the District of Columbia entered in Natural Re-sources Defense Council, Inc. v. Train (Cv. No. 1609-73) regulations are being concurrently promulgated for Subpart I. The regulations being promulgated include limits only on particle size allo. ed to be discharged and pH.

Additional anlaysis of the data available and the collection and analysis of additional information has determined that it is feasible to propose limitations on the allowable level of discharge of biochemical oxygen demand concentrations from wet storage facilities.

It is recognized that a wet storage operation can serve as a biological type treatment system if there is adequate detention time. It is also recognized that wet storage water bodies are utilized as receivers of process waste water generated by other operations in timber products processing facilities. Pollutants discharged to wet storage water bodies from such operations as glue system wath up, vencer dryer wash downs, fin-Ishitog and fabrication operations may have an adverse effect on receiving waters if not adequately treated.

Evaluation of data from a number of wet storage bodies indicates that biochemical oxygen demand (BOD5) levels average less than 40 mg/l with only one of 40 + data points greater than 70.

On the basis of this information it is proposed that Subpart I be modified to include a BOD5 limitation of 50 mg/l concentration in process waste water discharge.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460. Attention: Mr. Philip B. Wisman, Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as

TESTIMONY

OFFERED BY

THE CONNECTICUT AIR CONSERVATION COMMITTEE

A SECTION OF

THE CONNECTICUT LUNG ASSOCIATION

AT THE

PUBLIC HEARING

ON THE

CONTROL OF AIR POLLUTION

FROM FACILITIES OWNED, OPERATED OR UNDER CONTRACT

WITH

CONNECTICUT TRANSPORTATION AUTHORITY

FEBRUARY 11, 1975

My name is Earl M. Uram, and I am here today representing the Connecticut Air Conservation Committee, a section of the Connecticut Lung Association. Our organization has long been aware of the problems concerning the Cos Cob Power Plant. In fact, we have gone on record in letters to EPA and DEP in support of the kinds of actions being recommended today. It is our position that the proposed federal regulations, which will subject the Connecticut Transportation Authority facilities to the Connecticut Implementation Plan, are both just and necessary.

They are just in the sense that they will correct a basic inequality in the legal responsibilities of public and private agencies in controlling air pollution. If one state agency is exempt from the regulations of DEP, how can we reasonably expect private citizens to comply with those same regulations?

They are necessary, since the purpose of the regulations is to protect the public health and welfare. As a Lung Association we are concerned with the welfare of chronic lung patients, who are particularly susceptible to high pollutant concentrations. A recent Health Department estimate suggests that the prevalence of Chronic Respiratory Disease in this state is 844,365. A legal mechanism to insure the continuing regulation of all sources of pollution is, therefore, critical to the health of our citizens.

Furthermore, there is, according to DEP, a long record of complaints by citizens in Southwestern Connecticut concerning pollution problems caused by the Cos Cob Plant. Although some

of these disorders have been corrected, the regulations are still necessary in protecting these people from further air pullution problems.

In conclusion, the proposed regulations are necessary in the interest of public health; and they are just in allowing equality under law.

GREENWICH ENVIRONMENTAL ACTION GROUP

June 25, 1973

5%

Gov. Thomas J. Meskill State Capitol Hartford, Connecticut 06511

Dear Governor:

Well, the Penn Central and Dept. of Transportation have done it again....successfully prevented a solution to the intolerable pollution generated by the Cos Cob Power Plant. This time they have also succeeded in undermining the credibility of the Governor.

The mood in Greenwich is angry. People had a right to assume that, in the face of a national natural gas shortage, securing a guaranteed gas supply for the plant would be a first priority before spending almost 6 months on the mechanics of the conversion. Instead, the DOT did not check gas suppliers until several weeks ago.

Two tons of particulates and 1.5 tons of sulfur oxides now rain on Greenwich every day and have been doing so for years. Since 1947, when the plant was declared in violation by the State Health Dept., Greenwich citizens have been trying to get some relief to stop the pollution. The majority of Greenwich residents are tired of the promises, false claims, excuses and runarounds of the Penn Central and the DOT and they have no faith that DOT and PC will ever willingly correct the situation, because they have always put the railroad and finances ahead of the citizens right to clean healthy air. They have actively fought any meaningful corrections including 4 years of gas conversion proposals from various sources and the results have been continuing pollution in spite of 1969 PUC orders and 1972 Court intervention. (See attached history.)

Proof of their attitudes is our latest information that by December 1973, DOT plans to have the Power plant operating with coal to produce 240% of present power output and therefore over twice the current pollution. This is in spite of state and Federal Clean Air Acts which specify non-degradation. The new air emissions would then be 4.8 tons of particulates and 4.1 tons of sulfur oxide a day, a holocaust of pollution! I can assure you, Governor, that we, in Greenwich, will take any action necessary to prevent this plant from burning any more than present coal levels until such time as the plant is converted to gas or proper pollution controls are installed and tested.

We are writing you at this time because we believe that the promises and excuses of DOT will continue without any action until the plant blows up or shuts down, unless you take control of the situation. In fact, the

shut-down date, originally December 1973, has been advanced over and over and the contract for the 21 - 3 year electrification HASN'T BEEN awarded YET.

Various possibilities for your intervention present themselves.

- 1) Since gas conversion is the best hope for reducing the pollution in the shortest possible time, we urge you to go to Washington to use your influence and that of our Federal Senators and Representatives to attempt to secure a gas priority from the FPC of the EPA. This plant should qualify for a double priority as a much needed power source for mass transit and as the worst polluler in the state. If extra power is to be generated here soon it will have to be with gas as fuel. Since mass transportation has recently become a national priority because of environmental concerns, this should be the optimum time to obtain a gas priority which would make this mass transit facility environmentally compatible.
- Gas conversion at current power output levels is still possible and the gas available from our local supplier. The \$64,000 question is since DOT has known for a year or more that the new cars demand more power, where did they plan to get it? Neither the court nor Greenwich officials were told Cos Cob might be the source. Perhap the extra power can be obtained through Con Ed.
- 3) Gasified coal which is shipped in liquid form should be investigated.
- A nationwide search could be made for used converters or rectifiers which could be brought in to convert 60 cycle CL&P power to the 25 cycle power needed. Who bought the ones Penn Central had until recently at Devon? A GE employee told us some time ago that excess Navy converters might be available.
- 5) Water or caustic scrubbers should be investigated simultaneously with these other efforts because best estimates don't see them installed in less than 12 - 15 months.

Governor, we appreciate your concern about this problem which adversely affects the health and property of over 10,000 Greenwich residents. Only your determination to help is going to bring any results, in our view. We'd like to know that every possibility for obtaining gas has been exhausted by you personally and that other possibilities for relief are not being delayed by the usual bureaucratic inertia, incompetence or foot dragging which has so long delayed a solution to the Power Plant pollution.

We would appreciate being kept informed of the various steps as they are taken. Thank you for your concern and interest.

> Sincerely yours, Lun W. Jinishian

Lucy M. Jinishian
Cy. thin P Ruber ing

Cynthia P. Rubicam Co-Chairmen GEAG

Copies have been sent to the following.

Mr. Earl Wood Commissioner Dept. of Transportation

Mr. Collin Pease Deputy Commissioner Dept. of Transportation

Mr. Douglas Costle Air Compliance Division Dept. of Environmental Protection

Sen. Lowell Weicker

Sen. Abraham Ribicoff

Rep. Stewart McKinney

Sen. Florence Finney

Rep. Michael Morano

Rep. A. U. Fox

Rep. Dorothy Osler

Mr. William Lewis, First Selectman

Mr. William Lapcevic, Town Counsel

Dr. George Kraus, Director Greenwich Health Dept.

Mr. David Hemingway Riverside Association 1 Pine Crest Road Riverside, Conn.

Mr. John Rogers South Cos Cob Association Indian Field Road Cos Cob, Conn.

Mr. Peter K. Sour Old Greenwich Association 18 Shore Road Old Greenwich, Conn. Mr. Russell Hall, Commodore Riverside Yacht Club 14 Knoll Road Riverside, Conn.

New York Times

Mr. Charles Pirro Greenwich Time

Village Gazette

WGCH

Cos Cob Power Plant - Fact Sheet

1938 First known pollution complaint.

Plant cited as violator by State Health Dept. 1947 Years of attempting to abate pollution follow.

Report to Tri-State Transportation Commission by Gibbs & Hill Sept. 1966 Electrification and Modernization Study

- a) recommend speedy phase out of Cos Cob Plant because it is cheaper to buy power than to use Cos Cob Power Plant in any way.
- b) recommended change to 60 cycle 12 volt system - purchase 144 new cars, refurbish others.
- c) recommended electrification commence before ordering cars.

June 30, 1969 PUC Order to abate pollution issued to Penn Central Docket No.10' Findings: a) repair to eliminate excessive pollution b) switch to oil or gas

c) shut down plant (Firm gas conversion proposal made at this time by local gas co.

Nov. 1970 Sam Kanell, Deputy Commissioner, CTA, tells Greenwich that Power Plant will be phased out by Dec. 1973.

Conn. CTA and NY MTA take over responsibility for operation Jan. 1, 1971 of railroad.

Aug. 1971 Hearing before Clean Air Commission 1) PC (& CTA) request exemption from 1% sulfur fuel law.

- 2)
- CTA cites its exemption from regulation by other state regulatory bodies - Section 16-344 General Statutes.
- 3) PC and State claim no 1% sulfur coal available
- 4) Scott Skinner, local lawyer, proves to the contrary by citing three local suppliers and supplier in Penn. fields on Penn Central line.
- Exemption denied. (Again local citizens and gas supplier presented gas conversion proposal) (Again CTA stated plant would be closed by Dec. 1973)

Oct. 1971

DOT News Release
Commuter line Modernization funds
Phase I - \$80 million total cost - Federal Share

\$40 million received included conversion of the Power system making it possible to use commercial power and close Cos Cob Power Plant.

Jan. 1972

Phase II - \$38.2 million total - Federal Share \$15.1 million received.

(No work has started on electrification as of June 22, 1973.)

June 26, 1972 Town of Greenwich filed suit under PA 96 against Earl Wood, Commissioner of Transportation seeking injunctive relief against CCPP pollution.

Oct. 2, 1972 Telephone conversation GEAG . Sam Kanell, CTA

1) Power Plant will be closed by Dec. 1974.

2) When Cos Cob power plant breaks down, CTA buys extra power from Con Edison (but due to the terms of the contract this is very expensive - possible but expensive.)

Nov. 1972 Court intervention

1) DOT & DEP agree to work together on scheduled solution to problem.

Dec. 1972 Combustion Equipment submits gas conversion bid based on power output 12 megawatts.

Greenwich Gas Co. agrees to supply gas.

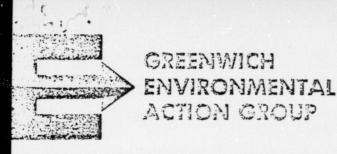
Jan. 11, 1973 Gov. Meskill orders gas conversion of plant.

March 1973 DOT & PC change specifications for conversion so as to generate 24 - 30 megawatts power at Cos Cob.

March 20, 1973

Letter to Penn Central from Greenwich Gas Co...
Unable to supply the extremely high volume of gas.
Suggest contacting Gas Inc., Brad Fox, President,
95 East Merrimack Street, Lowell, Mass. 01853,
importer liquid propane.

June 1973 DOT announces adequate gas supply unavailable. Ringleman tests show readings from $2\frac{1}{2}$ - 4 (standards allow 2 as a maximum.)



56

October 24, 1973

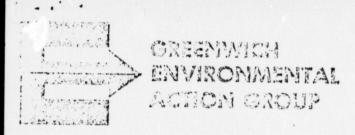
Governor Thomas Meskill State Capitol Hartford, Connecticut 06115

Dear Governor Meskill:

The following is an update on the Cos Cob Fower Plant:

- 1) The Cos Cob Power Plant is still spewing forth two tons of particulates and $1\frac{1}{2}$ tons of sulfur oxides a day.
- 2) Soon, this air pollution will double to 7 tons or more a day as the power demand of the new cars will require a 75-100% increase in power output from the Power Plant.
- 3) THE COS COB POWER PLANT CAN NOT BE CLOSED IN JUNE 1975, in spite of the Connecticut Department of Transportation's declared intentions, because the Railroad re-electrification schedule is already approximately 6 months behind schedule.
- A) Further delays should be anticipated because of required step by step federal DOT approvals (none received yet) and Penn Central's perennial programmation or probable foot dragging on their part of the project. Another area for concern is that CDOT has not yet contracted with Northeast Utilities to provide the new Connecticut power source for the Railroad. Northeast Utilities needs 13 months to 2 years to complete their work and cannot be expected to proceed indefinitely on good faith, as it is now doing.
- 5) Three months ago the DEP strongly recommended the installation of caustic scrubbers in the plant's stacks. Proposals from six firms were submitted which outlined construction times of approximately nine months and costs at \$1,500,000 or less.
- 6) Although \$1,500,000 may seem costly for a project with a limited but uncertain life-span, it is but a drop in the bucket compared to the \$400,000,000 of state funds recently committed by CDOT to the monorail pilot project at Bradley Field.
- 7) No action has been taken on this DEP recommendation by CDCT. Greenwich residents are still breathing these high volumes of dangerous pollution into their lungs every day, and suffering the high costs of property damage therefrom.
- 8) You, as Governor, made a committment in December 1972 to

Governor Meskill -2-October 24, 1973 terminate the hazardous pollution from this plant and to allocate state funds to this end. In summary, Governor, Greenwich has stewed in its own pollution long enough. It will soon get considerably worse, and there is still no realistic appraisal of when the Power Plant will close. A proposal for stack scrubbers which will end the Power Plant's noxious emmissions is before you. The sincerity of your committment to end this pollution is before the people. We urge you to see that the DEP recommendation for caustic scrubbers for the Cos Cob Power Plant is approved without further delay. (The sooner the work is commenced, the more justifiable it becomes economically.) We have had enough of promises and studies. The time has come for action. Will your answer be "yes" or "no"? Sincerely yours, Ling M. Jimishian Lucy M. Jinishian Co-chairman



January 28, 1974

Thomas J. Meskill, Governor State of Connecticut Executive Chambers Hartford, Connecticut 06115

Dear Governor Meskill,

Last week the new-fallen snow in half of Greenwich was black and children have been fearfully asking their mothers what is coming out of the sky...because the Cos Cob Power Plant is burning the dirtiest coal in its history. It contains over 1% sulfur and 14% ash and a good 10% comes out of the stacks unburned. Contrary to your recent comment that the effects of these particulates are merely "cosmetic", health officials state that particulates carry sulfuric acid into the lungs, adversely affecting health.

"Health is important as long as it doesn't cost money," seems to be the current state policy. It's true that low-sulfur low-ash coal costs more money. However, since the plant will burn 30% more coal this year to keep the trains running, doesn't Greenwich deserve a guarantee that the best quality low-sulfur coal will be used for the next 2 years regardless of cost? The \$500,000 set aside for the ill-fated plant conversion or the State's \$70 million surplus could fund the price difference.

Governor, the voters in Greenwich remember your promise of a year ago to abate the pollution at Cos Cob. Your credibility fell to zero when you allowed the Department of Transportation to flim flam Greenwich out of any meaningful improvements at the Power Plant. We and others wrote many times advising you that this would happen without your intervention. Now, since the DOT has declared the Power Plant exempt from State air pollution regulations under section 16-344 of the General Statutes, and since DOT is more concerned with their budget deficit than our air, we in Greenwich are stewing in ever blackening pollution. This is hardly in keeping with your statement that "the State should set an example for industry."

We hope you will stop delegating your responsibility for this problem to the Department of Transportation. Although better coal may be used here from time to time, nothing short of an executive order by you can guarantee this as a continuing policy to keep the Power Plant pollution to a minimum. We, therefore, ask you to issue an executive order that only .5% sulfur - 9% ash coal may be burned at Cos Cob. We will be happy to furnish 3 sources of supply for such coal.

At this point, only positive action by you will restore your credibility with the voters in Greenwich.

Sincerely yours,

Lucy M. Jinishian Cynthia P. Rubicam Co-Chairmen-GEAG

P.O. BOX 211 OID GPENMAICH COMMECTICUT 04270

Guess what? The Power Plant is now scheduled to close by December 31,1975 - not June 1975, as promised last summer to Greenwich officials by the Connecticut Dept. of Transportation (CDOT). - not December 1974, as promised by CDOT in court in July of 1972 - not 1972, as promised in 1969 at the PUC hearings. etc. etc The State has been responsible for the Power Plant since it took over the Penn Central commuter line 3 years ago. No deadline for any step in the RR re-electrification has ever been met. The severe pollution from the plant remains unabated and is due to get considerably worse in future months as more power is demanded from the Plant for the new cars. CDOT admits that 30% more coal will be burned at the Plant next year. If you can't come, write the governor Governor Meskill, a year ago, recognized the severity of the pollution and indicated that he would bring relief to Greenwich. He said " We must consider interim steps that can be taken now to improve air quality. We cannot be content to merely await the eventual long-term solution." Greanwich cheered him, but the pollution still goes unabated. Over 3 months ago, the Dept. of Environmental Protection submitted to CDOT and the Governor 4-5 detailed proposals from reputable companies for the installation of scrubbers in the CCPP stacks to effect ash removal. "ith the oil and gas shortage, scrubbers are the only remedy left. The State doesn't want to spend the money to install them. Last week, Governor Meskill sent CDCT officials down to convince us that the re-electrification was proceeding on schedule. Therefore, installing scrubbers so close to the planned closing date of the Plant would not be a justifiable expenditure of State monies, even though the Governor recently asked the public what to do with the expected \$70,000,000 excess State funds. Here is what we learned at that meeting:

1) Surprise ! The July re-electrification schedule is inoperative ! It was only preliminary. There's a new November one. 2) The procurement procedures for the transformers and circuit breakers which take a year to make, are 4 months behind schedule. for these items cannot now be awarded before Jan,1, 1974. 3) The total design phase for the project is 7 months behind and won't be complete before May 1, 1974. 4) The two smaller Power Plant boilers, 902 and 903, cannot now be shut down in Cct. 1974, as expected. 5) The construction schedule has been "realistically" reduced from 17 months to 11 months, for the job the former design engineers, Gibbs and Hill, estimated at 2 years. Construction cannot commence before August 1, 1974. 6) No unforeseen events will prevent this new schedule from being met. For instance, the energy crisis would not delay procurement of material, or cause the coal-fired Power Plant to remain on line to reduce the load on Conn. Light and Power. #) It is too late to install scrubbers because they cost too much for the short time they would be in use, they would take too long to be completed and the proposals weren't satisfactory. We later learned that the CDOT employee who passed on the feasibility or acceptability of the scrubber proposals is William Russell, former Penn-Central maintenance Engineer who testified at the PUC hearings, and who is believed to have been long opposed to pollution controls at the PCwer Plant. WF also learned that Peabody Engineering Co. in Stamford can design and install acrubbers within 9-12 months. GEAG believes there is an acceptable compromise which will allow the Governor to make good his promise to Greenwich and which would give Greenwich some insurance against the probability that unforeseen deleys will develop to further delay the re-electrification schedule or the possibility that the energy crisis may require the continued operation of the Power Plant. The compromise would be that the Jovernor order immediately, a negotiated contract to be awarded for the installation of a wet scrubber in the stack of 904, the largest and most used beller. Governor Heskill is holding a public forum at 7:30 P.M. Wed. Dec. At Cloonan Jr. High, Stamford. PLEASE CONE ... BRIMG YOUR FRIENDS AND YOUR SOCT ... ASK THE GOVERNOR TO ABATE THE POLLUTION ! In artin

IVEY, BARNUM & O'MARA

ATTORNEYS AT LAW
MERIDIAN BUILDING
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CABLE ADDRESS 'IBON'

STAMFORD OFFICE 101 BROAD STREET STAMFORD, CONN. 06901

(203) 661-6000

February 27, 1975

Environmental Protection Agency, Region I JFK Building Boston, Massachusetts 02203

Re: Proposed Regulations for the Control of Air Pollution from Facilities Owned, Operated or Under Contract with the Connecticut Transportation Authority

Gentlemen:

ARTHUR ROGERS IVEY

ROBERT C. BARNUM. JR.

FRANK E. JAMROZY (1972) RICHARD W. MARTIN

EDWIN J. O'MARA. JR.

NORMAN E. DAVIS

WRIGHT HUGUS, JR.

LAWRENCE E. LARSON ROBERT E. KUSCH

GEORGE W SCOTT .IP

EUGENE A. DISERIO RICHARD H. FITZMAURICE WILMOT L. HARRIS, JR. BRIAN T. O'CONNOR EDWARD D. COSDEN, JR. D. SEELEY HUBBARD

I am writing both individually and on behalf of the Riverside Association, as its President, to request that you include in your minutes of the public meetings held at Greenwich on February 25, 1975, both this letter and its attachment, a copy of the Finding and Order of the Connecticut Public Utilities Commission in its Docket Number 10771.

The Association was ably represented in person at the hearing by Mrs. Margaret Belknap and Mr. DeHaven Ross, and I would like to tender this letter as a further written addition to their remarks of that evening and on behalf of the Association, to urge the adoption of Federal regulations identical to Connecticut Regulations for the Abatement of Air Pollution (§§1950-508-1 to 19-508-25 inclusive), as soon as possible.

Once adopted, we urge that you enforce compliance with these regulations by the Connecticut Transportation Authority at its Cos Cob power generating facility, and wish to formally oppose the Authorities' request for a delay beyond the previously announced phaseout date of December, 1975, for the Cos Cob facility, and to further request that your office require the State to maximize its use of alternative sources of power at Devon and from the MTA to minimize the output requirements of the Cos Cob facility, and its continuing generation of large particle and gaseous pollution which have plagued the Riverside, Cos Cob and North Mianus areas of Greenwich far too long.

To place the State of Connecticut's request for a delay in the implementation and enforcement of Federal EPA Clean Air Regulations in a permissible historical perspective, I would like to direct your Agency's attention to the comprehensive records of the Connecticut Public Utilities Commission, including all transcripts, exhibits, and other evidence kept in connection with its Hearing, Findings of Fact and Order, entered in D.N. 10771 of the Public Utilities Commission concerning the Complaint by the Town of Greenwich and the Riverside Association concerning pollution from the Cos Cob Power Plant of the Penn Central Transportation Company in the Town of Greenwich, in order that you may be familiar with all aspects of the Cos Cob Power Plant's history of continued pollution.

These proceedings were instituted through the joint efforts of the Riverside Association and the Town of Greenwich as a result of continuing pollution generated by the Power Plant and total disregard of the New Haven Railroad to take any steps to reduce emissions.

Since the railroad was in bankruptcy, and State authorities refused to take any action toward rectifying the situation, a petition was filed with the Public Utilities Commission for relief. After hearing, the Commission, on June 30, 1969, issued its Order to the railroad as follows:

> "Eliminate the pollution by adoption of one or more of the alternate remedies stated in the Finding of Facts, No. (8), in order to achieve the elimination of pollutant emission from the stacks of the Cos Cob power plant."

The alternate remedies set forth in Findings of Fact No. 8 included:

- "(a) Repair the plant forthwith to effect a considerable reduction of the pollutant emission and reduce or eliminate the complaints.
- "(b) Close the Cos Cob power plant and obtain additional power from the nearest electric supplier to supplement the power from its present power supplier, the Consolidated Edison Company of New York.
- "(c) Operate the power plant but eliminate the use of coal, and use, in lieu thereof, low sulphur oil or purchase gas from the nearest gas supplier."

It should be noted (1) that this Order offered the railroad alternatives and (2) that if the first alternate were Environmental Protection Agency -3- February 27, 1975

elected, it did not limit the repairs which must be made strictly to those set forth in the study, but required results.

The Order of the PUC included a series of findings of fact as to the serious nature of the pollution. These were unequivocal and stated:

- "(1) It is incontrovertible that there are defects in the Cos Cob plant which, if repaired, would reduce the pollution in Greenwich. The extent of this reduction, however, would not be known until all defects have been repaired.
- "(2) Deleterious pollution is emitting from the stacks of the Cos Cob plant, injuring the health, safety and property of the people of Greenwich, and is a nuisance.
 - This deleterious pollution is unacceptable.
- "(4) Existing conditions are unacceptable, regardless of the financial condition of the Penn Central Company or whether or not it can reasonably expect funds from some outside source such as a governmental unit with which to eliminate this aforesaid pollution.
- "(5) The continuation of commuter service to and from New York by use of electric power produced by the Cos Cob plant cannot be acceptable as a superior or paramount factor or as fair exchange consideration for sufferance of the pollution by the residents of Greenwich.
- "(6) The Penn Central Company is abusing its privilege as a public service company by allowing this pollution to continue and disregarding the entitlements of the residents of Greenwich.
- "(7) The conduct of the Penn Central Company with respect to the Cos Cob plant pollution is plainly against the public interest."

Rather than acting "forthwith" as required by the Order, an appeal was taken and apparently no steps were taken to reduce plant pollution until the appeal was disposed of in about May, 1970, when the Order became final. Since then, in total disregard of the Public Utilities Commission's Order,

Environmental Protection Agency -4- February 27, 1975

public health and safety, State and Local health regulations, and in total disregard for the interest of the residents of the Town of Greenwich, and despite the expenditure of over \$500,000 for long overdue repairs, the Cos Cob Power Plant has continued its illegal pollution under the protective aegis of the State of Connecticut's statutory exemption, \$16-344 C.G.S.

For the reasons stated at the public hearing, and for all of the reasons stated herein, I would hope that we can rely upon you to provide the effective enforcement necessary to finally eliminate this source of illegal pollution, where lifetime has been all to frequently extended and then extended again.

Sincerely,

GWS:src Attachment



STATE OF CONNECTICUT

PUBLIC UTILITIES COMMISSION

STATE OFFICE BUILDING . HARTFORD, CONNECTICUT 06115

DOCKET NO. 10771

COMPLAINT BY THE TOWN OF GREENWICH AND
THE RIVERSIDE ASSOCIATION CONCERNING POLLUTION
FROM THE COS COB POWER PLANT OF THE
PENN CENTRAL COMPANY IN THE TOWN OF GREENWICH

FINDING AND ORDER

The Town of Greenwich, the Riverside Association, a voluntary association of citizens in the Riverside area of Greenwich, and many petitioners, joined in complaining to this Commission that pollutants issue from the Cos Cob power plant of The Penn Central Company located in the Town of Greenwich.

After due notice a public hearing was held on this matter on April 15, 1969 at the Town Hall in Greenwich and continued on April 16 at the Commission offices in Hartford.

All parties appeared by counsel. Many residents of the Town of Greenwich with counsel participated in the hearing. Many petitions were filed. Representatives of the State Health Department and The Connecticut Commission on Pollution Control also participated.

JURISDICTION OF PUBLIC UTILITIES COMMISSION CHALLENGED

Counsel for the Penn Central Company questioned the jurisdiction of this Commission to proceed to a hearing on this case and the taking of evidence, on the ground that matters of health and pollution resided exclusively in the Air Pollution Control Commission of the State of Connecticut. His motion, after being duly heard, was dismissed and the Commission proceeded to take evidence.

COMPLAINANTS' EVIDENCE

The Town and the Riverside Association joined in the investigation of the complaints registered by many citizens of the Town of Greenwich and cooperated with this Commission in presenting the case of both the Town and the Association in such a manner as to avoid repititious and numbrative evidence.

Considerable testimony was adduced that pollutants were emitting from the stacks of the Cos Cob plant of the Railroad and many exhibits of particulates were introduced in evidence.

Ringlemann tests were made by different parties and the testimony on these tests showed that the emissions from the stacks of the GCs Cob plant were, by the Ringlemann standards, pollutants.

By reason of an unusual civic pride and cooperation certain residents of Greenwich, who are professional engineers and knowledgeable in the field which was the subject of these tests, investigated the Cos Cob plant with the full cooperation of the Railread personnel and drafted a report. This report set forth the defects in the plant

and equipment which, in their opinion, caused the pollution. The report in full is attached as Appendix A.

This report also sets forth suggestions for measures to be taken to eliminate the defects and reduce or eliminate the polluting . emissions.

The Railroad agrees such defects exist but claims it does not have the funds available to do a thorough repair job, and is frankly looking for such funds from the State or Federal government. The Railroad practically takes the position of balancing the equities or priorities between continuing commuter service in Fairfield County to and from New York, or spending its own money to repair the Cos Cobplant.

In the meantime, the Railroad will repair defects when they reach certain stages of malfunction unrelated to the complaints but directly involved with continuing the flow of power to the electrified trains.

The specific recommendations of the voluntary committee of engineers for the Town are as follows:

	A. Equipment	Cost
1)	Replace all tubes in the mechanical collector for boiler 904	\$ 31,500*
2)	a) Replace the four ash-collection hoppers on boilers 902 and 903	13,000 estimated)
	b) Replace the economizers on boilers 902 and 903	70,000*
3)	Install smoke indicators and records	9,000*
4)	Install newer design spinner type exhaust heads for the ash vacuum systems	9,000*
:		\$132,500

* Figures have been taken from the Railroad's recommendations of Aug. 22, 1968, as amended

B. Maintenance

Additional maintenance men should be employed. The Railroad has money budgeted for them, but has had difficulty employing anyone.

C. Coal

Emproved coal would be helpful but is not recommended. Until the equipment is substantially improved, the use of better coal would have only minimum value, and the money could be better spent on additional maintenance.

D. Testiann

The Town of Greenwich should continuously maintain one or more vesting stations for measurement of particulate emissions from the power plant. Data obtained should be made available to the Railroad on a regular basis to assist it in its operations.

Proparations for such testing are under way.

Cons idration should be given to making stack emission tests after completion of the above repairs.

The Railroad filed an Exhibit called New Haven Railroad Commuter Service Electrification Study, dated September 1966, prepared by Gibbs & Hill, Inc. Quoted below is only that part of this study entitled "Summary of Conclusions and Recommendations."

PART I CONFIGURATION OF ELECTRIC-POWER SUPPLY

- A. It is recomme and that all traction power for the operation of the New Haven Railroad be purchased from the Consolidated Edison Company and from the Connecticut Light and Power Company, and that, insofar as traction-power generation is concerned, the operation of Cos Cob plant be discontinued.
- B. It is recommended that the nominal caterary voltage be changed from 11 kv, 25 cycles to 12 kv, 60 cycles. This change involves the following attendant modifications or additions to the New Haven Railroad plant:

1. Multiple-Unit Cars (44.00 Series)

Change ignitron rectifiers to silicon rectifiers. Change motors for transformer blower and oil pump from 25 cycles a.c. to d.c.

2. Locomotives

Retire from service all electric locomotives.

ADMINISTRATIVE NOTICE

The Commission takes administrative notice of its Docket No. 10715 issued after investigation of air and water pollution.

OFFER OF GAS SUPPLIER

During the hearing The Greenwich Cas Company offered to supply the Cos Cob plant with gas as the fuel to generate the necessary electrical power, and said Gas Company would make a capital expenditure of \$150,000 of its own funds to install the necessary equipment. This figure would not include any repairs that would have to be made to the boilers. The Greenwich Gas Company further states its willingness to furnish the gas at less than the present operating cost of the Cos Cob plant.

FINDING OF FACTS

- (1) It is incontrovertible that there are defects in the Cos Cob plant which, if Fepaired, would reduce the pollution in Greenwich. The extent of this reduction, however, would not be known until all defects have been repaired.
- (2) Deleterious pollution is emitting from the stacks of the Cos Cob plant, injuring the health, safety and property of the people of Greenwich, and is a nuisance.
 - (3) This deleterious pollution is unacceptable.
- (4) Existing conditions are unacceptable, regardless of the financial condition of the Penn Central Company or whether or not it can reasonably expect funds from some outside source such as a governmental unit with which to eliminate this aforesaid pollution.
- (5) The continuation of commuter service to and from New York by use of electric power produced by the Cos Cob plant cannot be acceptable as a superior or paramount factor or as fair exchange consideration for sufference of the pollution by the residents of Greenwich.
- (6) The Penn Central Company is abusing its privilege as a public service company by allowing this pollution to continue and disregarding the entitlements of the residents of Greenwich.
- (7) The conduct of the Penn Central Company with respect to the Cos Cob plant pollution is plainly against the public interest.
 - (8) Alternate remedies:
 - ..(a) Repair the plant forthwith to effect a considerable reduction of the pollutant emission and reduce or eliminate the complaints;
 - (b) Close the Cos Cob power plant and obtain additional power from the nearest electric supplier to supplement power from its present partial supplier, the Consolidated Edison Company of New York.
 - (c) Operate the power plant but eliminate the use of coal, and use, in lieu thereof, low sulphur oil or purchase gas from the nearest gas supplier.

DECISION

The Commission took jurisdiction of this case under the provisions of Sec. 16-1, 16-11, and other pertinent sections of the Connecticut public utility law having to do with the regulatory and supervisory powers of this Commission. It is recognized by this Commission that the jurisdiction of the Air Pollution Control Commission of the State of Connecticut extends to all polluters. The Public Utilities Commission does not in any way wish to encroach upon the duties and responsibilities of the Air Pollution Control Commission. By reason of the integral powers of the Public Utilities Commission with respect to the many interrelated factors of regulation and supervision of

public service companies it has a parallel and concurrent jurisdiction in matters of pollution emanating from any public service company installation and in the interest of the safety of the public and the employes of a public service company. This Commission possesses the experience and expertise of a public service company operation and is uniquely qualified to hear and decide upon any matter affecting public service companies, the public and the employes of the public service companies. The jurisdiction of this Commission in the regulation of public service companies is, in some matters, comparable to, but not in conflict with, that of the Air Pollution Control Commission.

Based upon the foregoing, the Penn Central Company is unreasonably polluting the air in Greenwich by its operation of the Cos Gob plant, particularly in view of the available alternatives to reduce to an acceptable standard, or completely eliminate, said pollution. In failing to do so, the company is in contempt of the law of the State; of Connecticut, the public interest and, in particular, the basic decent entitlements of the residents of Greenwich. The following order is promulgated by this Commission:

ORDER

Eliminate the pollution by adoption of one or more of the alternate remedies stated in the Finding of Facts, No. (8), in order to achieve the elimination of pollutant emissions from the stacks of the Cos Cob power plant.

We hereby direct that notice of the foregoing be given by the secretary of this Commission by forwarding true and correct copies of this document to parties in interest, and due return make.

Dated at Hartford, Connecticut, this 30th day of June, 1969.

Eugene S. Loughlin

Raymond S. Thatcher) PUBLIC UTILITIES COMMISSION

Harold F. Keith

County of Hartford) ss.
State of Connecticut)

Hartford, June 30, 1969

I hereby certify that the foregoing is a true and correct copy of Finding and Order issued by Public Utilities Commission, State of Connecticut.

Attest:

Surged Briffin

Executive Secretary, Public Utilities Commission

Mr. John T. Taintor, First Selectman Town of Greenwich Town Hall Greenwich, Connecticut 06830

Mr. Haynes N. Johnson, President Riverside Association 25 Hendrie Avenue Riverside, Connecticut 06878

Re: Cos Coo Power Plant of the New Haven Railroad

Gentlemen:

At your request, we have made an engineering study of the Cos Cob plant of the New Haven Railroad to determine how to reduce health problems created by the plant. Our report follows:

I

PURPOSE

For a period of years, owners of property in Greenwich have complained about emissions from the Cos Cob plant of the New Haven Railroad. This study is directed to that problem.

Our initial analysis led us to believe that the principal problem was not air suspended pollution as such, but settleable particulate matter. Air pollution (air-borne and gaseous matter) was considered secondary.

Improvement of efficiency of operation of the plant was not included in the study or its objectives, though it is believed that some of the within recommendations could improve the overall operation of the plant.

This study, therefore, has been directed to the heavier particulates and has considered the remedies which are available to reduce particulate emission during most of the time, recognizing the age of the plant. We realize that complete cessation of the age of the plant. We realize that complete that all parties, particulate emission is not practical and believe that all parties, including the public, should recognize this fact.

METHOD OF STUDY

Our review included a series of inspections of the boilers and particle collection equipment and study of the recommendations made by the Railroad in its report to Dr. Franklin M. Foote, Commissioner of Health, on August 22, 1968. We also considered recommendations of equipment suppliers and other reports, to the extent available, and prior test reports. Analysis was made of collected samples of particulate fall-out. In addition, we discussed the matter at length with Railroad personnel, all of whom were not only most cooperative, but extremely helpful.

III

RECOMMENDATIONS

Our recommendations recognize that the plant is old and that it may have breakdowns from time to time. However, the interests of the community require that, if it is to continue to be used, certain improvements must be made to reduce the particle matter fall-out at this time.

The adoption of these recommendations should result in substantial reduction in the quantity of emitted particulate matter. It will not, and cannot, eliminate all fall-out, only reduce it as much as reasonably possible considering the limited remaining life of the plant.

Install newer design spinner type exhaust

heads for the ash vacuum systems

Specific recommendations follow:

A. Equipment

1)	Replace all tubes in the mechanical collector for boiler 904	\$31,500	*
	(Note: Figures marked * have been taken from the Railroad's recommendations of Aug. 22, 1968, as amended)		
2).	a) Replace the four ash-collection hoppers on boilers 902 and 903	13,000	(est
	b) Replace the economizer tubes on boilers 902 and 903	70,000	
3)	Install smoke indicators and recorders	9,000	*

9.000 *

\$132,500

B. Maintenance

Additional maintenance men should be employed. The Railroad has money budgeted for them, but has had difficulty employing anyone.

C. Coal

Improved coal would be helpful but is not recommended. Until the equipment is substantially improved, the use of better coal would have only minimum value, and the money could be better spent on additional maintenance.

D. Testing

The Town of Greenwich should continuously maintain one or more testing stations for measurement of particulate emissions from the power plant. Data obtained should be made available to the Railroad on a regular basis to assist it in its operations.

Preparations for such testing are underway.

Consideration should be given to making stack emission tests after completion of the above reparis.

IV

DISCUSSION

A. Plant Description

The plant uses three boilers, 1#1s 902, 903 and 904. Normally 904 is the base line boiler and 902 or 903 is added to the line during peak periods.

Pulverized coal is burned in the boilers. The raw coal has been oil treated prior to shipment in order to reduce windage loss in handling and during open storage of reserves at the plant. It is crushed during unloading and transported to the pulverizer feed hoppers. Each boiler is served by two pulverizers which grind the coal to a fine dust which is mixed with air and burned in suspension in the furnaces. The resulting fly-ash is partly collected as coarse slag in the furnace hoppers but mostly collected in the combination mechanical-electrical dust collectors placed after each boiler. A very fine portion of dust passes through the collectors and is emitted from the stacks.

The separated dust falls into hoppers below the dust collectors and is periodically removed by a vacuum ash conveying system through a steam aspirator to an ash separator from which the dust is slewed with water to the ash dump. The steam and air used in the ash conveying system are vented out the top of the ash separator to the atmosphere.

The size of particles leaving the boilers and entering the dust collectors is largely determined by the fineness to which the coal is ground in the pulverizers and the maintenance of stable and efficient combustion in boiler furnaces.

The dust collectors cannot practically be made 100% efficient to collect all the dust; there is always a certain percentage which goes through the collectors. However, the mechanical collectors should be quite efficient for the larger size particles which are the main complaint.

B. Conditions affecting coarse dust emission

The coal fineness leaving the pulverizers is influenced by the inherent case with which the coal is ground down to a small size. Coals
from different seams are likely to vary in their Hardgrove grindability index. The pulverizers in this plant require an easily ground
coal with a high grindability index of around 100 in order to get fine
pulverization.

All coal grinding equipment wears out with use in spite of the special wear resistant materials employed. The type of pulverizers used in this plant will grind less finely as the parts wear out.

The coal fineness also depends on how the pulverizers are operated. For example, high loads or high air flows through the pulverizers are apt to produce coarser coal particles.

The mechanical dust collectors are also subject to wear by abrasion of the high velocity dust particles. This wear, if it progresses far enough, tends to reduce the efficiency of the collectors. The high gas velocities are required to make these mechanical collectors efficient. Efficiency is also affected by air leakage in the system, as, for example, through the collecting hoppers.

If the hoppers under the dust collectors are for some reason, not emptied, they will fill up, causing the dust which would have been separated to pass on to: the next hopper or up the stack.

If the dust collector hoppers are unloaded too quickly, the ash conveying systems become overloaded and may discharge some dust out the ash separator vent.

To summarize; less of the heavier particulate matter will get out of the stacks and settle in the vicinity if:

- 1. The coal has high grindability.
- 2. The primary crusher is in good condition so the coal is well crushed before it gets to the pulverizers.
- 3. The pulverizers are kept in good condition with the worn parts replaced before the coal fineness deteriorates too much.
- 4. The mechanical dust collectors are kept in good condition and their hoppers emptied regularly.
- 5. Furnaces and auxiliaries are maintained and operated to provide efficient combustion.

A lower ash coal will help somewhat, since there is less particulate matter to collect, but will not entirely offset worn pulverisers and dust collectors. Lower ash content of the coal may reduce wear of dust collectors and pulverizers somewhat, but there is an economic trade-off here since the lower ash coals cost more.

There are sporadic conditions which will temporarily increase the coarse dust emitted from this plant such as:

- 1. Some dust accumulates around a plant of this sort all the time. A strong gusty wind, blowing through the plant after a period of dry, relatively calm weather, will unavoidably carry out some dust in spite of precautions taken by the plant personnel such as oil treatment of the coal and calcium chloride treatment of the ash pile.
- 2. Upsets in boiler operation can occur unpredictably and, though normally handled in a routine manner, sometimes result in an additional amount of heavier dust being emitted.

These sporadic dust emissions, while unfortunate, are likely to continue, and there is not very much that can be done about them. However, they probably do not contribute to the majority of the dust out of the stacks.

C. Remedies for coarse dust emission

1. Boiler #904

Approximately 05% of the mechanical dust collector elements have been in service for about 19 years, with the remaining elements having been replaced over the past several years. From the condition of the elements removed, it is certain that many of the elements which have elements removed, it is certain that many of the elements which have not not been replaced are about to be worn through if they have not already done so. This life so far exceeds the normal expected life of the original elements, that the most practical thing to do would be to remove all the old aluminum elements and replace them with new cast iron elements.

Except for outages for maintenance and inspection, this boiler is in continued service and furnished the base steam load of the plant. It is not scheduled for outage until May 1, 1969, so that it may not be possible to get the mechanical dust collector repaired before cold weather sets in.

2. Boilers #902 and 903

The mechanical dust collector tubes on these smaller boilers are in reasonably good condition.

These two boilers are normally used only intermittently to handle peak train loads. Generally, one of these two smaller boilers will be fired up in the morning for several hours and again in the early evening.

APPEARDER A

The mechanical dust collectors on these two smaller boilers are not as efficient in original design as the mechanical collector on unit #904. Thus, it is to be expected that a greater proportion of course particles will pass through them than for unit #906. For this reason it appears to be important to maintain good coal fineness from the pulverizers on #902 and 903 so that fewer coarse particles will enter their mechanical collectors.

The ash collection hoppers on boilers 902 and 903 have extensive leaks in spite of continuous efforts to keep them in repair. This disrupts the normal flow through the collectors and so reduces their efficiency. These hoppers should be replaced.

Water leakage from the economizer tubes in boilers 902 and 903 wets the ash and frequently makes it impossible to remove the collected dust from the hoppers. The economizers should be completely re-tubed.

3. All Pulverizers

Periodic pulverized coal samples from each pulverizer should be taken at frequent enough intervals to spot poor fineness as a result of high loads, any shipment of coal suspected of not being up to standard, or excessive wear of pulverizer parts. Also the pulverizer parts should be inspected visually for excessive wear.

Both of the above procedures are followed to a certain extent by the plant, but, due to a reduction in personnel in recent years, the fineness checking on 902 and 903 has not been as frequent as formerly.

There are other important financial and operating benefits, besides decreased coarse dust emission, which accrue from keeping coal fineness up, such as reduced carbon loss in the fly ash, less wear on the pulverizer fan blades, induced draft fan blades, coal piping and burners, boiler and economizer tubes, dust collector parts, and ash handling systems. There should also be decreased slag deposits in the furnaces.

It is also suggested that the Hardgrove grindability of the coal be checked if coal comes from a different seam or supplier.

4. Smoke Recording Equipment

Installation of smoke recording equipment will provide continuing smoke level readings to assist the operators in controlling stack emissions.

5. Increased Personnel

Some of the combustion indicating equipment, such as CO2 devices, appear to require attention to work properly. It is suggested that there is sufficient instrument and other maintenance work, as well as pulverized coal sample work to be done, to keep the coarse dust emission down, that additional men be hired, if possible.

Tosting

Once the mechanical dust collectors and the pulverizers on the boiler have been repaired and are certified to be in good condition, it would be helpful if the efficiency of the collector were determined by test and compared with the original acceptance tests. As a part by test and compared with the original acceptance tests. On a part of the dust collector test, it is suggested that the pulverizers be tested and flue see applying the verses by tested. tested and flue gas analysis traverses be taken.

The installation of smoke indicators and recorders will assist plant operators in their efforts to reduce emission. The Town of Greenwich should monitor the particulate fall-out in the vicinity of the plant and continue to develop a satisfactory method of rapidly determining the fall-out in coarse sizes so that extraneous factors not connected with the plant can be identified and dealt with separately. Copies of the Town's test results should be furnished to the Railroad on a regular basis and discussed with them.

It is also suggested that the Railroad keep the Town of Greenwich posted on the physical condition of the mechanical dust collectors and each pulverizer. It would be helpful if copies of the periodic pulverized coal fineness checks and data pertaining to replacement of worn parts of the pulverizers could be sent to the Town.

D. Items not covered by this report

Matters not considered include:

- Smoke emission due to things other than large particle emissions.
- 2. Maintenance and other factors not related primarily to control of coarse dust emission. These could have a serious effect upon the continuity of operation of the plant.
- 3. Possibilities of improving combustion during cold start-ups of boiler 902 or 903 twice a day.

ACKNOWLEDGMENT

Through the cooperative efforts of First Selectman John T. Taintor of Greenwich and Messrs. Frederick J. Orner, William A. Russell, and C. Herbert Swanson of the New Haven Railroad, the plant has been made available for a series of inspections and all questions asked of the plant personnel by members of the group representing the Riverside Association have been freely answered where information was available.

The Greenwich Department of Health, and Mrs. Laura Morrison in particular, have engaged in testing work and provided substantial data.

Engineers other than the undersigned who assisted in this study include Nessrs. James A. Finney, Jr., Ralph R. Hennig, Arnold Peterson, Ralph Pireida, Robert N. Rickles and Louis Terraciano.

Such cooperation will continue to make the Town of Greenwich a good place in which to work and live.

Respectfully submitted,

Roland T. Bryan
Leslie C. Hardison
Andrew G. Steever
for the Riverside Association

September 19, 1968

The Yorth inviornmental pervice of Freenwich High school feels that the Conneticul Transportation authority showed be subject to the federal air pollution standards. We are concerned opecifically with the Cos dob power plant which is not meeting the air quality standards imposed by the Federal Chan air act. The feel that the plant should comply with these standards for the continued mon-compliance of the plant is a detriment to the health of freenwich residents.

4eb. 18, 1475 Youth Enviornmental Dervice Areenwich High School cow 43 a.m. 54 p.m.

GREENWICE.

GREENWICH, CONNECTICUT, FRIDAY, APRI

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BURSTING IN AIR' — The black smoke from the Cos Cob Power Plant isn't quite what Francis Scott Key had in mind when he penned the words of the National Anthem. Tower of soet marred backdrop of blue sky as flag at Strickland Rd. dock fluttered on breeze of pleasant spring afternoon Thursday. — Hood Photo

Nixon And Lawyer Ponder New Subpoena For

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WASHINGTON
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Exhibit 9

Morea F. Bettens 30 Chapel June Bibureille, Anne OROTE

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Feb. 10, 1975

Federal Environmental Protection Agency:

This obsolete plant has been settling it's filth too long. Let us stop the talk and do the right thing!

It is your responsibility to close the Cos Cob power plant, under the regulations of The Clean Air Act.

Sincerely,

Bob & Mona Behrens

Exhibit 13 ERS. EDWARD G. EGAN 1 Grimes Road Old Greenwich, Connecticut 06870 101 February 10, 1975 Regional Administrator Environmental Protection Agency, Region 1 John F. Kennedy Building Boston, Massachusetts 02203 Re: Proposed Amendments to the Connecticut Implementation Plan Dear Sir: I am writing in favor of the proposed amendments to the Connecticut Implementation Plan. As a member of the Greenwich Board of Health and also as a layman who has been a citizen of Greenwich for the past thirty years, I have been concerned with air pollution. It is unbelievable to me and to many others with whom I have talked over the years that no one during all this time has been able to curb the abuse of the Fenn Central's Cos Cob Power Plant. It doesn't speak well for democracy when the average citizen is required to meet certain standards for environmental health and a large corporation or government agency is not, let alone the arrogant lack of consideration for the health of a whole community. Therefore, I heartily support the amendments to the Connecticut Implementation Plan that will finally make the Power Plant accountable under the law.

Sincerely yours

Gamette 5 Egan

Exhibit 12

PETER E. HUCKEL

19 CHAPEL LANE
RIVERSIDE, CONN. 06878

203 637-0495

62

February 10, 1975

As a lifelong resident of Greenwich, most of which was in Riverside, I strongly recommend the inclusion of the Cos Cob Power Plant under the regulations of the Clean Air Act.

Having been raised directly accross from the power plant I know what a health and environment hazard the plant is. I want my four small children to benefit from cleaner air and cleaner area.

Peter Extendal

Exhibit 14

JEANNE M. NOLTE

50 CAT ROCK ROAD, COS COB, CONNECTICUT 06807

Euveronmental Prolection Agency Washington, D.C.

Dear Sirs:

Jo 25 years the Cos Cot bour Planthas been less than efficient. Forthe last 15 years, in my expensive as a neighbor & it will we moved away from it, it has spewed out such fumes as I have seen only in the liverte, Spain; bur paint used tiped of the livere and become disolved after a the livere and become disolved after a factor on the side toward the plant gran or two on the side toward the plant I mind of ours with an asmaticilised mired curry from Ment asmaticilised

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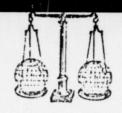
32 Chapel Lane Riverside, Conn. 06878

To: Environmental Protection Agency

Re: Cos Cob Power Plant

Since July of 1971 -- the month we moved across the river from the power plant -- we have rarely opened our windows. And as the plant showers the area with an umbrella of black fallout, we are reluctant to allow our children to play outdoors on the days when the wind blows these greasy, dark particles in our direction. This plant must adhere to some controls. The Clean Air Act of 1972 is a farce in Riverside. The plant has gotten worse each year.

Gene Bylinsky



e5

DAVID A. LUDDER 1 Buxton Lane Riverside, Connecticut 06878

PUBLIC HEARING CALLED PURSUANT TO SECTION 110(c)
[42 U.S.C. §1857c-5(c)] CONCERNING INCLUSION OF
CONNECTICUT TRANSPORTATION AUTHORITY ACTIVITIES IN
CONNECTICUT AIR QUALITY IMPLEMENTATION PLAN, FEBRUARY 11, 1975 - GREENWICH, CONNECTICUT.

* *

As has been previously stated, the purpose of the proposed regulations under consideration this evening, is to bring the activities of the Connecticut Transportation Authority, including the operation of the Penn Central power plant in Cos Cob, within the purview of the Federal Clean Air Act ¹ and its accompanying enforcement provisions. ²

Their adoption will make all CTA facilities subject to state, local, and federal enforcement measures. But perhaps more importantly, in light of past governmental negligence, it will permit "any person" to maintain a citizen's suit against such facilities for compliance with emission limitations. I urge the Environmental Protection Agency, therefor, to adopt these regulations as expeditiously as practical.

Federal awareness of the State's failure to include CTA activities in the Connecticut Air Quality Implementation Plan might have been hastened by more

than two years, had the responsible Town of Green-wich officials notified EPA of their difficulties in abating the smoke emissions of the CTA's Cos Cob facility. There was no need to await the Connecticut Supreme Court decision 5 which upheld the CTA's exemption status as the Federal courts had already addressed the question of conflicting state laws.

The Connecticut Department of Environmental Protection made a noble attempt to enforce its regulations against the CTA operated plant in Cos Cob in July of 1972 7 but at the direction of Governor Meskill, 8 abandoned their efforts. One year later. when the DEP recommended the installation of pollution control equipment, the Governor again offended area residents by rejecting the proposal as too costly. 9 The DEP, in conjunction with the CTA, then issued a "joint statement" announcing a phase out schedule for this facility. Despite its more than two hundred "wouldbe" violations in less than ten months last year, 10 this schedule contained none of the requirements or sanctions common to an enforceable compliance schedule. Connecticut residents should not be subjected to the same disregard for health and property that the CTA and the Governor have shown Greenwich residents by their negligent operation of the Penn Central power plant. With the adoption of these proposed regulations, such facilities can be bound to strict emission limitations or compliance schedules which will impose formidable penalties if violated. 11

The CTA may object to the adoption of these regulations suggesting that commuter rail service to and from New York City would thereby be threatened with discontinuation. We all share concern for that unlikely

probability, but the purpose of this hearing is to consider whether <u>all</u> CTA activities throughout the state should be subject to air pollution regulations, not to discuss what enforcement action may be taken against the Penn Central power plant in Cos Cob. The CTA will undoubtedly be given an opportunity to argue the efficacy of any such action when and if it occurs.

In view of past government incompetence and negligence, it is essential that these regulations be adopted to provide for Federal and private citizen enforcement if needed. Again, I urge the Environmental Protection Agency to proceed with the adoption of these proposed regulations.

Thank you.

¹⁾ Titles I & III of the Clean Air Act [42USC\$1857].
2) Section 113(a) [42USC\$1857c-8(a)]; Section 304

^{[42}USC\$1857h-2].

³⁾ Section 304(a) [42USC\$1857h-2(a)]; Section 302(e) [42USC\$1857h(e)].

⁴⁾ Supra at note 3.

⁵⁾ Town of Greenwich v. Connecticut Transportation Authority et al., Connecticut Law Journal, May 7, 1974 at 7.

¹⁹⁷⁴ at 7.
6) e.g. NRDC v. EPA, First Cir. Ct. App., May 2, 1973; 5 ERC 1879.

⁷⁾ State of Connecticut Notice of Violation to C.H. Swanson, Chief Engineer of Penn Central power house from Eckhardt C. Beck, Director of Air Compliance, DEP, July 7 & 25, 1972.

⁸⁾ Confidential interviews with DEP officials, April, 1974.

⁹⁾ Public Meeting, December 12, 1973, Stamford, CT.

^{10) 233} violations from 2/1/74 to 11/8/74 per Greenwich Health Department records.

¹¹⁾ Section 113(c) [42USC\$1857c-8(c)].

Exhibit 7 FEDERAL Tues - 2-10-75 E. P.A. all-Dr. george Kraus: The milliban family is Tind of dirty air coursed by The Cos Cob power plant, we can't even open our wendows we strongly recommend the inclusion of the Coa Cok power plant under the regulations of the clean air Shank you Homer, Bevery, Betty it one millikan 29 Agel Jane Leverside, Conn. OGPIJ

Exhibit 6

Mrs. John A. Nolan

13 Chapel Lane
Riverside, Conn. 06878

Feb. 11,1975.

6 P. a.

Pear Lines to show our support flooring
the melesseen of the
Cor Col Somes plant
under the regulations

Cor Col somes plant under the regulations of the Elean air act. Tours truly marie & John Irolan TO: Environmental Protection Agency

RE: Cos Cob Power Plant

We recommend the <u>inclusion</u> of the Cos Cob Power Plant under the regulations of THE CLEAN AIR ACT.

If our state and federal governaments do <u>not</u> observe the laws and regulations, what do you expect the rest of the U.S. society to do. We have had <u>too</u> many examples of government and government officials who do not obey the laws of this land.

The citizens of Riverside have suffered for too long the effects of the polluted air of the Cos Cob Power Plant.

The citizens of Riverside have suffered for too long the effects of the polluted air of the Cos Cob Power Plant.

Muriel and Louis Seraso

38 Chapel Lane

Riverside, Conn. 06878

As head of the Health Committee of the Re resentative Town Meeting, I support the recommended amendment of Connecticut's State Implementation Plan.

The residents of Greenwich are particularly sensitive to environmental protection, living in an area that is a water-shed; has tidal and inland wet-lands and is classified as a Class "A" pollution zone. As a town, we live with and are subject to environmental regulations covering these as well as other areas. We are particularly concerned with a dedication to enforcement of all environmental regulations and it is gratifying to know that the DEP is taking all possible steps in that direction.

Physikit ! Galding

Elizabeth C. Spalding

Chairwoman, RTM Health Committee

2/11/75

12 70

1769 Post Road Darien, Conn. 06820 February 13, 1975

Town of Greenwich Board of Health Greenwich, Conn.

Gentlemen:

I spend a great deal of my working life on River Road and the emission from the power plant close by are certainly affecting my health. I have chronic bronochitis, gave up smoking a year ago but doubt that this has helped me much since I am sure I am breathing in more harmful substances than I ever did smoking.

Greenwich has so much to offer its residents it seems a shame that clean air cannot be included.

Can not something be done to force the railroad to burn a cleaner fuel? Some time ago a lawyer formed a group and as I remember he located some sources of fuel which he recommended the Railroad use and which would have resulted in less pollution.

Sincerely,

7 P Navis

F.P. Davis

CC Environmental Protection Agency Region 1 John F. Kennedy Bldg. Boston, Mass.

2/14/75

71

26 Miltiades Avenue Riverside, CT 06878 February 12, 1975

Dr. George Kraus Greenwich Health Director Town of Greenwich Greenwich, CT

Dear Dr. Kraus:

I would like to urge that the Cos Cob power plant be included under the regulations of the Clean Air Act.

As a 16 year resident of Greenwich, the last 11 of which have been at this residence, I can assure you that the emissions given off by the power plant are intolerable. I would personally like to invite anybody who questions my position to observe our porch which has not been cleaned since we closed it in November. The soot on top of soot would clearly show the uninitiated what we are breathing in every day.

Obviously, energy must be produced somewhere, somehow. The community totally relies on the railroad and the railroad needs energy. What concerns me is that long before the existance of the Environmental Protection Agency it was shown that the railroad could buy power from the Connecticut Light & Power Company cheaper than it could produce its own. Nothing changed! What concerns me is that for years the railroad was under court order, I believe, to institute some kind of after burner controls to insure that black soot would not pour out of the chimney. Nothing changed!

What concerns me, Dr. Kraus, is that the cleaning up of the power plant will be delayed and delayed ad infinitum. The people here on the banks of the Mianus River have suffered for 70 years. The time for change is now.

Sincerely,

(Mrs.) Shaw W. Stuart

STATEMENT TO HEARING OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY Greenwich, Feb. 18, 1975

My name is Mary B. Sullivan. As a resident of Riverside since 1956, I have been aware of the pollution caused by the Cos Cob power plant for a long time. We live in a white house that becomes grimy with soot soon after being painted. The sills of our bedroom windows collect soot each morning after having been opened during the night, giving us some idea of the air we breathe.

As a candidate for public office last fall, I went to the'
Greenwich Library to review the history of our town's struggle with
the Cos Cob power plant. In the library's card file index of
Greenwich <u>Time</u> newspaper articles I found, beginning in 1967 when
the indexing system started, over 100 entries concerning pollution
caused by the power plant. I would like to read a few of them to you:

In 1967:

Connecticut Air Dirtier than Ever (4/4)

Town's Highest Pollution Reading Last Week (4/5)

Cos Cob Power Plant Explosion Delays Testing (8/3)

Smog So Thick, Fire Alarm is Turned In (8/28)

Cos Cob Power Plant is Major Source of Pollution (11/3)

In 1968, solutions were sought. Here were some of those headlines:

Generator is Slated for Cleaning to Cut Flyash (5/31)

Power Plant Has Bad Boiler Fixed (6/4)

New Haven RR Urged to Test Better Grade of Coal (7/26)

\$132,500 Improvements Urged to Lessen Power Plant Soot (3/23)

PUC Hearing is First Step for Power Plant Correction (10/2)

CTA Funds Asked to Correct Power Plant Fallout (10/18)

In 1969 the railroad began to fight back. To wit:

Railroad Denies Plant Pollution (4/6)

Air Pollution Control Commission to Probe Plant Pollution Here (4/18)

PUC Orders Railroad to End Air Pollution at Cos Cob Plant (7/7)

Railroad May Appeal PUC's Soot Decision (7/8)

State May Give Funds for Soot Repair Project (7/9)

Riverside Association Fights PennCentral Legal Steps on Order to End Cos Cob Plant Pollution (7/11)

Early in 1970 the railroad began talking about closing down

he Cos Cob plant; but its timetable was woefully in error:

Pollution Panel Sets State Rule on Clean Fuels (1/6)

Cos Cob Closing by 1972 Likely (1/22)

Penn Central Acts at Last to Cut Plant Soot (3/18)

Penn Central Quietly Drops Its Cos Cob Repairs (7/31)

Air Pollution Level is High (11/10)

Penn. Seeks State Exemption on Pollution by Power Plant (12/7)

Riverside Group: Asks Denial of Exemption for Penn. Soot (12/18)

State Says Repairs to Lower Soot 50% (12/22)

1971 was more of the same, however:

Cos Cob Plant Has Breakdown, Blackening Sky (3/9)

Phaseout Predicted for 1974 for Power Plant at Cos Cob

Town Once Appealed to War Dept on Cos Cob Power Plant Pollution (8/23)

Clean Air Commission Rules Out Cos Cob Power Plant Exemption (9/28)
Leak in Boiler Interrupts Power Plant's Best Era (11/23)

In 1972 the town began legal action and other fuel was considered:

Town Will File Suit on Plant Emissions (6/16)

Injunctions Sought to Force State Action on Power Plant (7/3)

Cos Cob Plant May Convert to Oil Soon (7/13)

Power Plant Switch to Oil Labeled Costly (9/11)

\$365,000 Bid Offered to Convert Cos Cob Power Plant to Gas Fuel

1973 told of a series of failures:

Power Plant Foiled on Gas Conversion (6/12)

Poor Air Quality Found Here Especially in Sleeping Hours (6/13)

Town Fails in Plant Suit (7/10)

1975 Date Set for Closing of Cos Cob Power Plant (7/20)

State Nixes Scrubbers at Power Plant Stacks (12/4)

Most of us can remember what happened in 1974:

Cos Cob Power Plant Exempted from Clean Air Statutes (5/7)

Town Employee Seeks US Aid on Pollution (7/22)

I have added my own entry for 1975 from last weeks Greenwich

Delay in Closing Plant (2/11)

Time:

This brings us to the present hearing I hope the Federal Environmental Protection Agency will act to put an end to this long standing abuse from the Penn Central's power plant. The state of Connecticut's action to exampt the railroad from all state regulation was ill advised. At the time, this action was taken, the state of New York exempted the Penn Central from regulation concerning tariffs and interstate trade but did not give it blanket exemption as Connecticut did.

Greenwich residents are paying dearly for this decision both in terms of money and health. I hope the Federal Environmental Protection Agency will brook no more delay, accept no more excuses, and act now to put Connecticut Transportation Authority facilities under federal air pollution control.

--Mary B. Sullivan 66 Indian Head Road Riverside, Conn. 06878 E.P.A.

AS A RESIDENT OF CHAPER LAND
DERISION, WE EXPERIENCE THE UNPLOASANT SOUT
POLLUTED AIR COMING TRUM THE POWER PLANT
(OS COB.
WE BELIEVE THE COS COB POWER PLANT
WED NOT BE EXCLUDED FROM THE
CLEWN AIR ACT. OF 1972

MM- Coleda 23 CHAPER LAWE PIVERSIDE, CT.

Exhibit 10 Coo est Proce Plante The Redual authorities should take all provide tops immediately to short down he Coo Cot Paver Plant and not waste tax page money equipment hat will probably not be effective. The ridiculous reasons diven by DO.T. for delaying The shut down are orrionally exerces and should not be considered seriously. The rederal authorities should also top any sale of power by the Coolor Plant T any other users Gennell Fisher Vice Chairman Pollution Control County, 2. Vice Chairman freeze Jaking agen.

ARBOR MARINE CENTER, INC. 49 RIVER ROAD, COS COB, CONNECTICUT 06807 - 203 869-7211

February 11, 1975

own Of Greenwich oard Of Health reenwich, Conn.

ear Sirs:

Our Marina is located approximately one half mile up river rom the power plant in Cos Cob. Frequently the smoke drifts up iver affecting the physical well being of anyone in its path. leadaches and breathing difficulty seem to be the most immediate ffect.

Several times during the year, smoke is so heavy, that we can o longer see the railroad bridge or the power plant. Fly ash is o heavy at times, that you have to wear protective goggles.

There are continous complaints from our customers about the ccumulation of fly ash on their boats. Aluminum masts and spars eem to oxidize wherever fly ash accumulated over the winter season.

We have swept an average size boat, and collected as much as ne quart of accumulated ash. This destroys any finish on the boats. It is practically impossible to deliver a perfect job or painting r varnishing. Marina profits are at best marginal, and with the ituation described above, it is impossible to attract and keep he larger and more profitable boats in the Harbor. Therefore, the emission from the power plant also has adverse financial ffects on our business.

We believe this plant to be one of the greatest health hazards to the Greenwich area. We feel strongly that an alternate source f electricity should be found.

Rudolph M. Ermischer

General Manager

MI :de

C. Environmental Protection Agency

egion 1 .F.K. Building

oston, Mass.

ONLY COPY AVAILABLE

LARSSON TRADE USA Wally

RIVER ROAD—COS COB (GREENWICH) CONN. 06807 PHONE: (203) 661-4341 (4434)

FEB 18 1975

February 11, 1975

Town of Greenwich Board of Health Greenwich, Connecticut 06830

Re: COS COB POWER PLANT POLLUTION

Gentlemen:

Our company is a national distributor of sailboats operating from Palmer Point Marina on the Mianus River in Cos Cob, Connecticut. We have been at this location since 1968, and we have provided countless people with the joy and pride of owning a sailboat that provides fun and relaxation for the whole family. Sailing is one of the least polluting of all sports, and it does not use up costly energy.

It seems ironical that we are operating our business from a location that is incessantly polluted and bombarded with filth and dirt spilled forth from the Cos Cob Power Plant. Perhaps it seems foolhardy for us to persist in operating from this location, but we do as we have been under the erroneous assumption year after year that the power plant would be subjected to strong pollution control or cease operation altogether. This, of course, has not come to pass, but yet during these years the boat owners have been subjected to ill-conceived new operating laws that have proven both inadequate and inadvisable, such as no discharge center facility on board boats without adequate pumping out stations.

On a typical day Cos Cob Power Plant covers our sailboats with a grimy layer of soot and dirt of substantial particle size. On numerous occasions our staff and customers while walking to the docks have got these particles in their eyes causing extreme discomfort, and possibly creating harmful after effects.

Sometimes the fallout is so heavy that brand new boats just launched become such an eyesore that we cannot show them to their best advantage. Filth anddust penetrates through the tiniest crevices and renders these boats in a second hand condition. There is no question that we have suffered financial loss on account of this filth. Customers who would normally keep their boats at this marina have fled the area. Any kind of respiratory ailment, no matter how mild, is immediately aggravated when one breathes this highly polluted air. Our office is constantly covered with dust that seeps through closed windows. Deterioration of canvas as well as fibreglass gloss and delicate instruments o ccurs throughout the year.

We support any kind of legislation that will put an end to this flagrant abuse. We cannot help but think that our operation would have been closed down a long time ago had we been in violation by as little as one percent of what this plant produces every day.

Very truly yours,

LARSSON TRADE USA

Fred W. A. Peters

FWAP:h

X.c.: Environmental Protection Agency, Region I
John F. Kennedy Building
Boston, Massachusetts



KMA ADVANCED MACHINE COMPANY

3 River Road, Cos Cob, Connecticut 06807 • Telephone: (203) 869-5610

February 11, 1975

Environmental Protection Agency Region I John F. Kennedy Bldg.

Boston, Massachusetts

Gentlemen:

I have owned the Palmer area which is northeast of the Penn Central power plant since 1947. The emissions from its stacks have become progressively worse through the years.

Five years ago, I built a 165 slip marina which houses petter than \$1,500,000.00 worth of boats during the summer season. I receive complaints and lose customers whenever the wind blows from the southwest. During this time the boats are covered with ash and dirt up to a 1/2" thick. Customers leave and go to Stamford because of this condition, and the town of Greenwich loses tax revenue and I lose slip customers.

We hope that you will do everything in your power to eliminate this nuisance. I am also sure that you will be doing the bankrupt Penn Central a favor too, as they can buy power much cheaper than they can make it. They should, very shortly, have enough of the new 60 cycle cars to operate without the old 25 cycle car that this power plant generates power to operate.

Very truly yours

Frank J. Hekma

Chm. of the Board

JH:DR

UNITED STATES COURT OF APPEALS

For the Second Circuit

Robert W. Blanchette, etc.,

Petitioners,

OF SERVICE BY MAIL

against

United States Environmental Protection Agency,

Respondent.

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

Juan Delgado , being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 596 Riverside Drive, Apt. 1, New York, New York
That on June 24, 1976 , he served two copies of the Brief and one copy of the Appendix

Land and Natural Resources Division
Department of Justice
Washington, D.C. 20530
Att: Kathryn A. Oberly, Esq.
Appellate Section

Jean Sutton, Esq. Environmental Protection Agency Room 2203 John F. Kennedy Federal Building Boston, Massachusetts 02203

by depositing the same, properly enclosed in a securely-sealed, post-paid wrapper, in a Branch Post Office regularly maintained by the United States Government at 350 Canal Street, Borough of Manhattan, City of New York, addressed as above shown.

Sworn to before me this 24th day of June

. 1976

Minus Caspach

Notary Public, State of Islam Mark
No. 30-0932360
Qualified in Nassau County
Commission Expires March 36, 39 7 7

